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Official Report of Debates (Hansard)

Monday 1 May 2006

Journal des débats (Hansard)

Lundi 1^{er} mai 2006

Standing committee on general government

Stronger City of Toronto
for a Stronger Ontario Act, 2006

Comité permanent des affaires gouvernementales

Loi de 2006 créant
un Toronto plus fort
pour un Ontario plus fort



Chair: Linda Jeffrey
Clerk: Susan Sourial

Présidente : Linda Jeffrey
Greffière : Susan Sourial

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 1 May 2006

Lundi 1^{er} mai 2006*The committee met at 1552 in room 151.*

SUBCOMMITTEE REPORT

The Chair (Mrs. Linda Jeffrey): Good afternoon. The standing committee on general government is called to order. We are here today to continue consideration of Bill 53, the Stronger City of Toronto for a Stronger Ontario Act, 2005.

Our first order of business is the adoption of the revised report of the subcommittee on committee business. Mr. Prue, could you read that report into the record, please?

Mr. Michael Prue (Beaches–East York): Surely.

Summary of decisions made at the subcommittee on committee business:

Your subcommittee on committee business met on Thursday, April 13, 2006, Wednesday, April 26, 2006, and Friday, April 28, 2006, and recommends the following with respect to Bill 53, An Act to revise the City of Toronto Acts, 1997 (Nos. 1 and 2), to amend certain public Acts in relation to municipal powers and to repeal certain private Acts relating to the City of Toronto.

(1) That the committee hold up to four days of public hearings at Queen's Park on Wednesday, April 26, Monday, May 1, Wednesday, May 3, and Monday, May 8, 2006, and two days of clause-by-clause consideration on Wednesday, May 10, and Monday, May 15, 2006.

(2) That the committee clerk, with the authority of the Chair, post information regarding the committee's business on the Ontario parliamentary channel, the committee's website and one day in the Toronto Star.

(3) That the Chair and committee clerk be authorized to schedule any requests received by April 13, 2006, and that these witnesses be scheduled on Wednesday, April 26, and Monday, May 1, 2006.

(4) That interested people who wish to be considered to make an oral presentation on Bill 53 should contact the committee clerk by 5 p.m., Monday, April 24, 2006.

(5) That on Tuesday, April 25, 2006, the committee clerk supply the subcommittee members with a list of requests to appear received after April 13, 2006.

(6) That, if required, each of the subcommittee members supply the committee clerk with a prioritized list of the names of witnesses they would like to hear from by 4 p.m., Wednesday, April 26, 2006, and that these witnesses must be selected from the original list

distributed by the committee clerk to the subcommittee members.

(7) That the committee clerk, in consultation with the Chair, be authorized to schedule witnesses from the prioritized lists provided by each of the subcommittee members and that these witnesses be scheduled on Wednesday, May 3, and Monday, May 8, 2006.

(8) That if all groups can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties and no party lists will be required.

(9) That if all groups cannot be scheduled, the committee add another day of public hearings on Wednesday, May 10, 2006; that these groups and individuals be offered 10 minutes in which to make a presentation; and that the two days of clause-by-clause consideration be held on Monday, May 15, and Wednesday, May 17, 2006.

(10) That groups and individuals on the prioritized lists and those that submitted their requests to appear before April 13, 2006, be offered 15 minutes in which to make a presentation.

(11) That on Wednesday, April 26, the minister be invited to make a 15-minute presentation followed by 15 minutes of questions and answers, to be divided equally among the three parties.

(12) That the deadline for written submissions be 12 noon, Monday, May 8, 2006.

(13) That the research officer prepare a summary of the testimony heard.

(14) That a deadline, for administrative purposes, for filing amendments be determined on the last day of public hearings.

(15) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

So moved.

The Chair: Thank you, Mr. Prue. Any discussion on the report?

Mr. Ernie Hardeman (Oxford): I know this is a revised report from the previous report, and I wondered about the appropriateness of defining the days as it relates to clause-by-clause in this section now that this is a totally new report and then at the end of the report changing that, because it says in number 1 that the

clause-by-clause consideration will be the 10th and the 15th. Number 9 goes from Monday the 15th to Wednesday the 17th, so I wondered if that should be changed in the report.

The Chair: It absolutely should be changed. It's my oversight. I noticed that we needed to change the dates in 9, but forgot to change them in the first section. So you're right: It should reflect the same throughout.

Mr. Hardeman: The other part, if I could, is the same type of thing, the provision of the lists and picking priorities. If we go to section 9, there's a bit of a problem there. Are we only scheduling those who were picked, or are we scheduling all the ones who applied? The report says that we have picked our preferential ones. So I wondered if that really is—

The Chair: I'm going to get the clerk to respond to that.

Mr. Hardeman: I would just say that numbers 5 and 6 are somewhat redundant in this report, as we're dealing with the total number in section 9.

The Clerk of the Committee (Ms. Susan Sourial): Essentially, we had said that witnesses should respond by 5 p.m., April 24, that I would supply the committee members with a list of requests to appear, and that, if required, each of the subcommittee members supply the committee clerk with a prioritized list. We received a prioritized list. Now with number 9, we're saying that if all groups cannot be scheduled, which is what was the case previously—

Mr. Hardeman: I guess, Madam Clerk, my question really is, if you received the prioritized list back in your office and there are members on that list that no one has picked, are they still part of number 9 or are they not? We precede number 9 with how we will create the list, which is what each subcommittee member prioritized. It's possible that some of the delegations on the list were not prioritized by any of the three members of the subcommittee, and so then they would not be on the list. Again, I know that exercise has already been completed, so I would suggest that would not be required in this report.

The Clerk of the Committee: I think the intent of number 9 was that if all groups cannot be scheduled, we add a couple of days and we cover everybody who requested to appear by the deadline. So the lists aren't necessary any more.

1600

Mr. Hardeman: I guess that would be my point. I think those two could be eliminated from the report. That's not critical, but it would seem to me that since we're not using the priority listing, we don't need to say that we went through that process, recognizing that the process is long since now gone.

The Chair: Are you moving the report, Mr. Hardeman?

Mr. Prue: I moved it.

Mr. Hardeman: Mr. Prue moved it; I would second it.

The Chair: All right; you would second it. Any discussion?

Mr. Brad Duguid (Scarborough Centre): I want to thank Mr. Hardeman and Mr. Prue for taking the time after the last meeting and on the phone on Friday to discuss these matters. I didn't at that time support the direction we were taking here. However, in the interests of co-operation and to ensure that we get this done, we will certainly support this. Our preference, Madam Chair, as I said at the time, would have been to have either extended the hearings that we were having by an extra hour or so each night to get this done, being a priority of the government and the city of Toronto to get this complete, or to have done morning sittings to accommodate the additional presenters. Never was there a time that the government didn't want to hear the additional presenters, but we wanted to do it in a more compact way. That was acceptable to Mr. Prue at the time, but it wasn't acceptable to Mr. Hardeman, unfortunately.

In the interests of co-operation, we'll support this reluctantly, because we would have liked to have gotten it done earlier, but I think we want to make sure that, as we move ahead with this very important issue to the city of Toronto, we're working together with the opposition to get through this and get this done. Certainly, as per our discussion with Mr. Hardeman during the original committee meeting, we look forward, given this, to his co-operation in ensuring that we do get through this to the extent possible.

Mr. Hardeman: I appreciate the comments from the parliamentary assistant in the spirit of co-operation. I just want to recognize that there were two objectives that I in my discussions at the subcommittee wanted to achieve. One was the fact that all those who had applied in a fair and equitable process would be heard. The second is that I think this committee really has an obligation to perform under the same rules as the House, as efficiently and effectively as the House. In the House, when you want to get something done quickly, you don't just automatically schedule more meetings at totally different times. You have to work within that system to hear what needs to be heard in the time allotted to do that. So I very much appreciate the co-operation and look forward to a successful conclusion to hearings on this bill.

Mr. Prue: I'm happy everyone's happy here today. There you go. It's much better than the subcommittee meeting. Could I also add, though, that we have a very thoughtful presentation here from Mr. Paul Bedford, whom I knew for many years at the city of Toronto before his retirement and my leaving to come to the province. He has sent a written deputation and explains that he will be out of the country from April 29 to May 9. I assume he will be back after that. Since we are extending, if he could also be advised, should he also want to make a deputation. He has written this in lieu of making a deputation because, as he says, he was not picked and he would be out of the country until May 9 anyway. If he is here and wants to make it, I'd like to hear from him.

The Chair: So if he met the deadline, he would be one of those people on our list. In the interest of

everybody playing nicely together today—that's really helpful—can I suggest that I read the amended first clause in? Numbers 6 and 7 would be eliminated based on Mr. Hardeman's recommendations. The first clause of the standing committee on general government revised summary of decisions made at the subcommittee would read:

“(1) That the committee hold up to four days of public hearings at Queen's Park on Wednesday, April 26, Monday, May 1, Wednesday, May 3, and Monday, May 8, 2006, and two days of clause-by-clause consideration on Monday, May 15, 2006, and Wednesday, May 17, 2006.”

Any further discussion? All those in favour? That's carried.

STRONGER CITY OF TORONTO FOR A STRONGER ONTARIO ACT, 2006

LOI DE 2006 CRÉANT UN TORONTO PLUS FORT POUR UN ONTARIO PLUS FORT

Consideration of Bill 53, An Act to revise the City of Toronto Acts, 1997 (Nos. 1 and 2), to amend certain public Acts in relation to municipal powers and to repeal certain private Acts relating to the City of Toronto / Projet de loi 53, Loi révisant les lois de 1997 Nos 1 et 2 sur la cité de Toronto, modifiant certaines lois d'intérêt public en ce qui concerne les pouvoirs municipaux et abrogeant certaines lois d'intérêt privé se rapportant à la cité de Toronto.

The Chair: We have a number of witnesses to see this afternoon, and I would like to remind all witnesses that you will have 15 minutes to speak with us today. When you get up to the front of the table if you could identify yourself and the group you speak for. After you've done that, you'll have 15 minutes. If you leave any time, we'll have an opportunity to ask you questions.

TORONTO BOARD OF TRADE

The Chair: Our first delegation is the Toronto Board of Trade. Welcome. If you want to pour yourself a glass of water or anything, please make yourself comfortable. I only have two names here on my agenda, but welcome. Once you've begun, you'll have 15 minutes.

Mr. Bob Hutchison: Thank you, Madam Chair. We appreciate the opportunity to provide our comments to the committee. My name is Bob Hutchison; I am the chair of the Toronto Board of Trade. With me today is Cecil Bradley, who heads our policy department at the Toronto board, and Angie Brennan, who is responsible primarily for this aspect of the board's policy.

As the committee members likely know, the Toronto Board of Trade has been a strong advocate of new powers and independence for the city of Toronto. This was clear in our report last year on a proposed City of Toronto Act. It's based on the premise that Toronto, as

the economic engine of our nation, needs and deserves better than it now has.

We've supported the efforts of the provincial government and the mayor of Toronto in working towards a City of Toronto Act that gives Toronto the authority to govern itself and let it reach its full potential. On behalf of the board, I'd like especially to applaud the political courage and wisdom of this government in tackling this issue and in producing an admirable bill in Bill 53. In particular, I want to commend the contributions and efforts of the Premier, Minister Gerretsen and Brad Duguid, his parliamentary assistant, all of whom have been very accessible and supportive in the board's views on this important subject.

While we've backed the government's development of the new act, we've also supported the Premier in his observation that, “With authority comes great responsibility.” We describe the new act as needing to be a three-legged stool: increased authority being balanced on the one side with a more accountable and efficient governance structure and, on the other, with new fiscal resources to match the financial obligations put on Toronto. All three legs are needed if the model is to work and our city of Toronto is to thrive.

Our comments today on Bill 53 are based on this premise. You will see that our written submission on the legislation is structured under the headings of Powers, Fiscal Resources, Governance Structure and Checks and Balances. Our report makes 14 recommendations, and I commend it to the committee members for a full understanding of our ideas and concerns. I'd like to concentrate on a few of the key points, starting with the new powers provided to the city in this important bill.

We believe that Bill 53 would provide some of the broad and independent powers required by the city and would establish a new relationship based on mutual respect, consultation and co-operation. These are key elements for a new and more mature relationship with Toronto.

While we endorse the principle of broad powers for the city, our submission also outlines a couple of specific concerns, one of which is business licensing. In our view, in order to protect Toronto's business competitiveness, we recommend that Bill 53 explicitly limit licence fees to cost recovery—the principle of cost recovery. Right now, the legislation is unclear about the extent to which the city can use its licensing regime to raise revenue from city businesses.

The new licensing powers also need transparency, so we recommend that the bill should contain provisions for public notice and meetings prior to licensing bylaws being passed, as is done under the Municipal Act, 2001. When it comes to powers, though, our most important recommendation is that the legislation must ensure that any new powers or revenue sources are preceded by the implementation of a stronger city of Toronto governance model. An improved governance structure will help ensure that the city has demonstrated the requisite level of accountability in exchange for new powers and tools.

Equally important, it will also help the city use those powers and tools responsibly and efficiently.

1610

The Toronto Board of Trade supports the province retaining regulatory powers to specify a governance model for the city of Toronto, if needed. However, we hope that the province will work with the city to ensure that a stronger governance model is a reality before Bill 53 becomes law, and preferably a model that's developed and implemented by the city itself. We proposed a model last year and have outlined it again in our written submissions today. It's a model that we believe would allow the city to develop and implement a strategic, city-wide vision and enhance its accountability to taxpayers. Our proposed model was followed very closely by the report of the city's own governing Toronto advisory panel.

To be specific, our model is based on a balance of effective local neighbourhood representation and appropriate centralized powers to define and implement a vibrant city vision. This requires a mayor and an executive committee with prescribed powers, always subject to council approval, as well as ensuring an effective civic administration. The latter, effective civic administration, requires a system and, more importantly, a culture that ensures that councillors set policy and priorities and the civil administration implements without interference from councillors. The administration must be independent. Councillors are not elected to manage, nor should they interfere in management.

The board also has concerns with the level of delegation powers contained in the bill. Our report recommends that council be able to delegate only administrative and minor quasi-judicial duties to city staff. Other quasi-judicial or legislative powers should go to standing committees or to community council, not to individual councillors.

Returning to the general principle, it's critical, in our view, that a governance proposal be included in the legislation or be undertaken and implemented before the bill is passed. Before anything else, we would ask you to help give our city a more accountable and effective government, ready to handle the new authority and independence being offered by this legislation.

I would now like to move briefly to another one of the three legs of the stool: finances. I'm sure it's not necessary to remind the committee of the key role that the city of Toronto plays as a generator of economic wealth for Ontario and Canada, providing one quarter of our province's GDP. Despite this economic importance and its own inherent economic strength, Toronto is unable to fulfill its responsibilities with its current sources of revenue. Bill 53 represents an opportunity to correct this situation. However, the bill's provisions do not adequately address the city's fiscal shortfall or balance the new powers provided in the legislation.

In order to re-align the city's revenue sources with its expenditure responsibilities, the Toronto Board of Trade has recommended that the province upload Toronto's social program and transit costs, or provide the city with

the requisite sales tax room. We're pleased that there seems to be some recognition of the uploading principle now, all subject to current fiscal constraints of this government. We firmly believe that rebalancing the city's expenditure responsibilities and revenue sources must be part of implementing a new legislative regime. Again, to use the analogy, the stool cannot stand on only one or two legs; it must be balanced equally on all three.

Of course, the city also has a responsibility to demonstrate improved fiscal responsibility in tandem with provincial improvements to the municipal finance model. For example, business property taxes in Toronto are the highest in the GTA. Our offices pay more per square foot in taxes than just about anywhere in North America, and industrial property tax rates are up to three times higher than in surrounding municipalities. For that reason, the board supports Bill 53 maintaining, at this time, provincial control of municipal non-residential property tax policy in the city. However, instead of limiting business property tax rate increases through regulation, the legislation itself should include provisions that restrict tax increases on property classes when their ratio to the residential tax rate is above that prescribed by the provincial government. Using legislation instead of regulation to control the increases would enhance the level of investor confidence in Toronto.

These proposals are set out in more detail in our written brief. I hope the committee will study that document carefully.

As always, the Toronto Board of Trade is very willing to discuss and explain our ideas and to provide constructive input and feedback. You can continue to count on us as this legislation moves forward.

Both the city and the province have shown great vision and a true spirit of co-operation in coming this far towards a new City of Toronto Act. We applaud your efforts and look forward to seeing an improved Bill 53 become law. With the right legislation, a new Toronto will emerge, more competitive and stronger than ever, more independent but more responsible, and better equipped to be the foundation for a stronger Ontario.

Thank you, Madam Chair.

The Chair: You've left about a minute for each party to ask questions. Mr. Hardeman, are you going to ask a question?

Mr. Hardeman: Thank you very much for the presentation. Just a couple of quick questions—

The Chair: One quick question.

Mr. Hardeman: Well, I'll put it all in one, Madam Chair.

The Chair: Make it quick.

Mr. Hardeman: It was quite emphatic that you needed to change the governance model before implementing the ability to tax. You added on that the policy decisions for business and commercial taxes should stay with the province. What's the connection? If we're confident that the new structure model can set taxing policies for everyone, why not industrial and commercial businesses?

Mr. Hutchison: For practical terms, if you could get to that point where business could be assured that business and industrial taxes could be exercised responsibly by the city, in theory, I think we'd accept that proposition, but I don't think there's much evidence that that's going to be the case immediately. Our proposal, for the sake of business confidence, would be to take it in steps. Let's get the framework governance structure in place, and then we can play with the fiscal tools as required. That's just one example. There are going to be other fiscal tools that we would expect the city to consider and implement, if appropriate.

The Chair: Mr. Prue.

Mr. Prue: One minute is not much. You talk about uploading. There's approximately \$3.2 billion for all the municipalities in Ontario that needs to be uploaded on the social services side: welfare, public housing, health, those things. There's another \$6.2 billion or so on education. Are you looking to see all of that uploaded, or just a portion of it? That's \$9 billion. That's more than half of the property taxes.

Mr. Hutchison: I think as a matter of principle what we're looking for is that the social and education costs that are better borne out of the revenue authorities that the province has borne by the province and not by the city. They're simply inadequate at the city level. When you get into slicing and dicing which particular pieces should move, that's a more complicated discussion. But the fact of the matter is, if the objective is to make the city of Toronto work, then we should identify which aspects of that \$9 billion, or whatever the number is, ought to come off the city's books and go back to where it was and where it belongs: at the provincial level.

We understand it takes time and we understand there are fiscal constraints on this government now, but looking ahead over the next few years, I think if we can articulate that that's the goal we want to get to, we'll get there. It's a sounder basis for funding those social costs.

Mr. Prue: Just in terms of the time frame, are you looking at three years, five years, the life of a government, 10, 20? It's important for me to get an idea of exactly how fast you want this done.

Mr. Hutchison: Our hope would be that it could be implemented in this government's mandate, whether that means following—

Mr. Prue: Another year and a half.

Mr. Hutchison: Not necessarily. I was very careful in my choice of words. Your mandate may or may not extend, but I think we're encouraged by the view that your government has taken on this principle. It wasn't being articulated a year ago. It is now, and I think we're going in the right direction. I think it's when you can afford it and when it makes sense.

1620

The Chair: Thank you. Mr. Duguid.

Mr. Duguid: Mr. Hutchison, thank you for your presentation and the detailed work you've done here before us today. You mentioned the words, in referring to the Premier on this particular issue, "political courage and

wisdom" in moving forward as we have, and "great vision and a true spirit of co-operation." I think those attributes also apply to yourself and the board of trade in the work that you've done here, because I know you had the same political challenges that we've had as we've moved forward. I think we have moved forward very boldly, and we would not be where we are today were it not for the input of the board of trade, the co-operative approach that they've taken on this and the progressive position they've taken that will ensure that Toronto is a stronger city as a result of it.

My quick question to you is, we've uploaded costs for public health; we've uploaded a considerable amount of costs for public transit, both capital and operating; we've uploaded some costs for land ambulance—

The Chair: Can you summarize your question, Mr. Duguid?

Mr. Duguid: Would you agree that we've made considerable progress in that area, and would you be willing to be part of future discussions on where to take it from here?

Mr. Hutchison: Absolutely. Thank you for your comments. We have enjoyed participating, and we're going to continue to participate. We'd be pleased to participate in those discussions. We are encouraged by the progress. It seems to be a generally accepted view that those costs shouldn't reside at the municipal level; they should go to a senior level of government. We're more than prepared to work with you over the time it takes to get there.

The Chair: Thank you very much for being here today.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Chair: Committee, our next delegation is the Canadian Federation of Independent Business. Before they hand out their handouts, they've shown some initiative and provided a customized handout for each member of the committee, but procedurally, they're supposed to provide something that is consistent for all members. So we need unanimous consent that you can receive a customized—

Mr. Prue: How are they different?

The Chair: They've apparently done some surveying of your municipality and got a customized response to your community. Do you want to hear what it is before you'd make your decision?

Mr. Prue: Yes. This is highly unusual, so yes.

The Chair: It is. Okay.

Before you begin, could you identify yourself and tell us what you did, before we can accept it?

Ms. Judith Andrew: Hello. I'm Judith Andrew, vice-president, Ontario, with the Canadian Federation of Independent Business. What we've been doing is—and it's still ongoing—conducting a local leaders' survey in connection with matters municipal. It just so happens that we do have some responses that would be quite relevant to the MPPs around this hearing, so we've brought them for

you to see. There's a basic form for everyone to see what the questions were, but you do have some specific responses relevant to your area.

The Chair: Okay. That will give everybody enough material to make a decision. Do I have unanimous consent to receive those packages? Yes? Okay.

As you get those—Mr. Rinaldi?

Mr. Lou Rinaldi (Northumberland): Madam Chair, I don't mind if they want to supply specific information for my riding, which they normally do—thank you very much—but I think we should all be part of what everybody else is getting as well. We're going to be talking about one piece of legislation here that benefits everybody. That's my opinion.

The Chair: I'm not sure we can accommodate that today. I think the presentation is—

Ms. Andrew: We have them with us here, so if you want to see us afterwards, or we can send them to you later if you don't want it to be part of the official committee proceedings.

The Chair: Mr. Flynn, did you want to say something?

Mr. Kevin Daniel Flynn (Oakville): The only point I'd make is, I think it's up to the delegation. They've got 15 minutes, and they can use it any way they choose, as I understand.

The Chair: What we're trying to tell you is that the written material you're getting is customized to your riding; it's not the general presentation.

Mr. Flynn: I think that's wonderful.

Ms. Andrew: The whole presentation is quite uniform. It's just one little piece in the kit that's customized.

Mr. Duguid: I don't think we need to belabour this. Maybe you could just send the clerk the overall numbers—I assume it's numbers, or something like that—so that we have a copy of everything when you're done. Would that be agreeable?

The Chair: Is that possible? One copy?

Ms. Andrew: We do plan to do more work with this information, so it will become evident in the days and weeks to come. So we can certainly do that, and it will be while you're deliberating on this issue.

The Chair: So the answer is yes.

Ms. Andrew: If you do want to see what your local leader in your community said about some of these matters, we have that too.

The Chair: Okay. I think we have unanimous consent.

As you get yourself settled, Ms. Andrew—we have an audiovisual presentation—is it just you who will be speaking today?

Ms. Andrew: No. I am joined by colleagues Satinder Chera on your left—Satinder is our director of provincial affairs, Ontario—and Tom Charette on your right. Tom is our senior policy analyst for Ontario.

The Chair: Welcome. You'll have 15 minutes.

Ms. Andrew: Thank you, Madam Chair.

You've probably been looking at the title slide, and while your kits are being handed out, I'd just like to tell you that this title slide is not meant to be sarcastic. It is not meant to crack wise, an attempt at that. It is actually the result of thoughtful analysis of Bill 53 and our deeply rooted fear that it will lead to significant additional damage to a city that is already in deep trouble.

When you get your kits, the presentation is actually on the right-hand side, second item in.

Today's presentation: We'd like to talk about CFIB's Toronto members' top priorities. We have measured Bill 53 against the objectives as laid out in the final report of the joint provincial-city task force. Then we asked ourselves to what extent the bill accomplishes those objectives. We have some recommendations for you.

The above information was gathered during personal visits to CFIB's Toronto members in the last half of 2005. As you can see, the top three priorities of CFIB members are highly connected to the tax and regulatory policies of the city, the top three being total tax burden, cost of local government, and regulation and paper burden.

Bill 53's objectives, according to the final report of the joint task force, are: to improve or increase Toronto's competitiveness, and there we had 12 mentions; Toronto's fiscal sustainability, five mentions; Toronto's accountability to voters, 12 mentions; and Toronto's autonomy as an entity, five mentions.

CFIB unreservedly endorses these objectives. In fact, we ask, who could be against them? But we urge the members of the committee to look beyond the obvious merit of these objectives and consider just what Bill 53 does to actually advance them.

Toronto is in trouble. During the last 12 years, the province has had steady economic growth. The 905 area surrounding Toronto has had spectacular economic growth. Toronto has had 12 years of economic stagnation and decline. If committee members love this city, they must make sure of two things: that Toronto does get help, and that it gets the right kind of help.

I'm now going to ask my colleague to review a series of slides prepared last year by the city of Toronto. We'll go through them quickly. We won't have time to examine them all, but they document the decline and the reason for it.

Mr. Tom Charette: Am I on here? Do you have to turn yours off?

Mr. Duguid: You're on.

Mr. Charette: Okay. Thank you.

In the last decade and a half, Toronto has lost 100,000 jobs while the 905 area has gained 800,000. Toronto is no longer the economic engine of the province that it once was. As we entered the new century, office construction in Toronto had come to a virtual halt. The city has actually been losing industrial assessment since the early 1990s.

This slide showing the total assessment base is perhaps the most eloquent of all. Toronto's is flat, or

underwater, so to speak, while Durham, Halton, Peel and York have exploded.

Why has all this happened? Let's listen to the city itself. Toronto's commercial property tax rate is far out of line with the rest of its neighbours. We'd ask you to take note that this is the one major competitiveness factor that has been and continues to be under the direct control of successive city councils. While the commercial is way out of line, the residential property tax rate in Toronto is low by comparison to other municipalities nearby and in the province. To call a spade a spade, one has to say that we've been hiding the true cost of services from the residents, protecting them from it, for many, many years.

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Parenthetically, if you look at the next slide, we've got a problem with property taxes in Canada. In terms of the OECD countries, Canada is second in the world in terms of the percentage of government revenue obtained by property taxes. We're second to the UK, as a country, but Ontario is even higher than the UK. That fact needs careful thought.

This final chart shows how massively Toronto's businesses are overtaxed compared to the residential, both components of provincial education tax and municipal tax.

So what does Bill 53 do for the urgent solution that is needed for Toronto's competitiveness? I'll turn this over to my colleague Satinder Chera.

Mr. Satinder Chera: The next slide shows you the different concerns that our members have with respect to the city of Toronto. Again, reasonable property tax levels: a very poor rating there. Overall awareness of small business issues: very, very poorly received. Money for public services: again, very, very poor ratings.

Overall, our position on Bill 53 is that, first, it contains no prescriptions that would compel Toronto to deal with its competitiveness problems. However, what it does do is give it more permissive powers by way of additional regulatory and taxing powers. Given some of the slides that my colleague just presented to you, it's only going to make the matter even worse if Toronto is allowed to levy those on the business sector.

As Judith mentioned at the outset, we really do believe that Bill 53 will result in a weaker Toronto and an even greater 905 region.

Our recommendations are:

(1) A new City of Toronto Act must rebalance the property tax rates significantly enough to restore its regional competitiveness.

(2) Prohibit the imposition of any new taxes, licensing fees, service charges and regulatory costs on the business sector.

Again, the slides we showed you make it very, very clear that this sector can no longer tolerate any further downloading on to itself.

Next, Bill 53 and fiscal sustainability: Toronto's mayor has made it clear that Bill 53 will not make Toronto fiscally sustainable. The city claims that the root cause is city spending on provincial responsibility pro-

grams. The province has not challenged these claims. Therefore, it seems logical to resolve these claims before proceeding with Bill 53. Know your facts before you get into a situation where you're going to hand over new powers to a city that has shown very little responsibility in the past of aiding its business sector.

On accountability, Bill 53, by its broad, permissive formulations, creates more potential for overlap and duplication, and leaves citizens without the ability to hold either level of government accountable. We recommend, therefore, that the act must contain clear and unambiguous lines of demarcation between the program, service and regulatory responsibilities of the province and the city, with an absolute minimum of duplication and overlap.

On autonomy, Bill 53 removes some of the current Municipal Act requirements in the interest of autonomy. Our recommendation is to maintain the detailed requirements for certain municipal policies and the restrictions on business licensing contained in the Municipal Act, 2001 in the new City of Toronto Act.

In summary, Bill 53 requires substantial restructuring in order to avoid causing substantial damage to a city that is already facing daunting economic prospects. Those slides that we showed you weren't our slides; they were slides that the city itself had put together.

As a final note, we understand that the government is also contemplating making changes to the Municipal Act. We would strongly recommend that the Bill 53-style legislation should under no circumstances be reflected in the changes to the Municipal Act, 2001.

We'd be happy to take any of your questions now. Thank you.

The Chair: You've left about two minutes for each party, beginning with Mr. Prue.

Mr. Prue: Let's deal with the last point first. All of the other mayors are lining up waiting for this to pass. I've heard Hazel. I've heard a number of other ones saying as soon as the City of Toronto Act passes, they want the same broad powers for their municipalities. Are you saying that should not be done?

Ms. Andrew: No. It should not be done. In fact, I would go so far as to say that the mayors that are saying that are probably in a "me too" kind of mode, but truly, when you ask them, they don't really want additional powers to tax and regulate. I think they're going to go along with this because it seems to be a done deal for Toronto. Municipal governments would rather move, as our members would wish, towards a better realignment of services and costs with an aligned revenue source to be able to pay for them. Hazel herself has said that that is a key thing that she really wants for her municipality.

Mr. Prue: I think to be fair to Hazel, she doesn't want the taxing powers; she wants everything else. It's okay.

You have not come out directly—the last group talked about uploading what was downloaded in order to make Toronto competitive. I asked them the question about the \$3.2 billion for all of Ontario. Would you agree that the

province should upload that? If so, where should they get the money?

Ms. Andrew: We actually went a little further in our pre-budget brief, which is on the left side of your kit—

Mr. Prue: I remember that. That's why I'm asking here.

Ms. Andrew: We said that the province should absolutely ascertain Toronto's true fiscal position. That hasn't been done. There have been suggestions that Toronto needs a lot more money, but no one has actually looked into the fiscal situation. Once that analysis is done—and we think it should be a forensic audit because we just don't buy the notion that more money is needed without actually looking into it—then we could look at uploading social services, starting with welfare; but only when the analysis is done, and certainly not in the company of additional powers that will permit the municipality to tax, regulate, fee and charge businesses with death by a thousand cuts.

Mr. Prue: Do I have more time?

The Chair: No. Mr. Duguid.

Mr. Duguid: Further to Mr. Prue's first point about the Municipal Act changes, I don't know if I quite heard you correctly; perhaps I don't understand. You don't have concerns about additional powers to municipalities, authority and that kind of thing. It's more the revenue tools; if, in the Municipal Act, we were to provide the similar revenue tools to—

Ms. Andrew: We have concerns about the revenue tools and about the additional regulatory powers, because we believe that those will be used against the business sector, just as the evidence shows the property tax system has been used to tap the business sector very heavily. We have great concerns about extending those powers.

Mr. Duguid: You talked about the tax ratios, business tax versus residential tax, and that being a challenge, certainly in Toronto more than anywhere else. Are you aware that despite our philosophy of ensuring that Toronto has access to as many alternative sources of revenue as we could possibly give, we have not given up that power?

Ms. Andrew: On that tax ratios, absolutely. We're aware of that. If you had done that, that would have made a bad piece of legislation very bad.

We are also aware that the city did look at the tax ratios last year and approve a 15-year plan to start to address it. But given the magnitude and the immediacy of the problem, we see that as a very modest and very slow start on implementing something that will actually make Toronto stronger. Toronto is in serious decline and we need to address that.

The Chair: Mr. Hardeman.

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Mr. Hardeman: Thank you very much for the presentation. As you got to the end of the presentation, I was somewhat surprised to find that the previous presenter and you agree on one thing, which is that the city is not in a very good position to set tax policy for industrial-commercial as opposed to residential. Your numbers

show quite clearly that for the years when the city was doing that, they were increasing industrial-commercial rates to a much greater impact than residential, and that's why we have that disparity now.

They agreed that it was okay for the city to have the power to set policy for the residential tax rate, but the province should keep the authority to set policy for the industrial-commercial tax rate. I presume they had somewhat the same information you had, based on what would happen if you increase the industrial-commercial rate comparatively more than they already have. So I see that we're on the same wave length as to what the problems are.

When you say you don't believe this policy should be used to write the new Municipal Act—that the new Municipal Act should not be designed after this—is that, in your opinion, because this will work for Toronto but not for the rest of the province or because it's bad enough that Toronto have this bad legislation but we don't want to do it in the rest of the province?

Ms. Andrew: It's your latter scenario.

Mr. Hardeman: My last one is right?

Ms. Andrew: We think this is bad legislation. We don't think it will do any of the things it was promised to do. All the mentions of autonomy and accountability won't be served. If the powers are used to tax, regulate, fee charge, levy and license businesses, it will worsen an already difficult situation with the property tax load as it is. It would be a dreadful example for any other municipality to copy, which is why we want to see the legislation—

The Chair: Thank you.

Mr. Hardeman: So you would suggest that we shouldn't pass this one either?

Ms. Andrew: That's right.

The Chair: Thank you very much for your time today. We appreciate your being here.

Ms. Andrew: Thank you for the opportunity.

TORONTO TAXICAB BROKERAGE ASSOCIATION

The Chair: Our next delegation is the Toronto Taxicab Brokerage Association. Welcome. My researcher has just told me how much he likes your brief. It's nice and short; short and sweet. That's good. We're pleased you are here. Are you both going to be speaking today?

Mr. Jim Bell: Yes.

The Chair: Once you start, could you say your names for Hansard? You'll have 15 minutes.

Mr. Bell: Ladies and gentlemen, my name is Jim Bell, and I'm the general manager of Diamond Taxicab. Joining me today is Peter Zahakos, general manager of Co-Op Cabs. We are here to represent the Toronto Taxicab Brokerage Association, as well as the 9,000 licensed drivers, 2,200 licensed taxi owners, 1,500 licensed ambassador owners and 1,000 support staff who earn their living in the Toronto taxicab industry.

Let me begin by saying that the concerns we are here to express today are based on real experience. We are, right now, probably an industry that is most closely regulated by the city of Toronto. Everything about our industry, from the age of the vehicles to the amount of fares we charge our customers to the licensing of drivers, is regulated by the city of Toronto. We are subject to vigorous inspections and regulatory oversight. Unfortunately, though, we have had to participate in prolonged litigation and battles with our city.

We are not here today to tell you that the City of Toronto Act should not be passed. We did not come here to tell you that the city should have greater or lesser authority. We are here to speak to you about a very specific part of the legislation that concerns us and a number of other industries greatly. It is specifically on the issue of licensing bylaws.

As members of the committee know, municipalities issue licences to taxi owners for the operation of taxicabs within their municipal boundaries, and Toronto is no different. Until now, Toronto has been governed by the Municipal Act, like all other Ontario municipalities.

Subsection 150(2) of the Municipal Act, 2001, as it is currently written, sets out that:

“Except as otherwise provided, a municipality may only exercise its licensing powers under this section, including imposing conditions, for one or more of the following purposes:

“1. Health and safety.

“2. Nuisance control.

“3. Consumer protection.”

Mr. Peter Zahakos: Our primary concern, and the reason we are here today, is that Bill 53 has omitted those requirements for the city of Toronto. Our understanding of the bill, if it is passed as written, is that the city of Toronto council will have no restrictions on it as it considers and passes licensing bylaws. As we understand it, other Ontario municipalities will still have to meet those thresholds.

We wish to emphasize that our concern stems from the lack of restrictions on licensing bylaws only, not on all bylaws. We understand that the intent of the bill is to empower the city of Toronto in a number of areas. We do not take issue with the general intent of the bill. We are here as an industry organization that relies on municipal licensing in order to stay in business. Our fear—and I use that word intentionally—is that the city may take this new licensing authority and use it improperly.

Mr. Bell: It is important that you understand that we’ve had years of interaction, up to and including litigation, with the city of Toronto under the existing Municipal Act, and we have had our concerns validated by the courts before. We have had to go so far as to issue a court challenge under the Charter of Rights and Freedoms to protect ourselves when the city, for reasons only it understands, mandated that the owner of a licensed taxicab would have to be present when the vehicle was being inspected. We won that case.

Please understand that in our industry, the plate or licence that is issued by the city is the primary asset of

the business, more valuable than the car itself. This asset is often passed from one generation to the next when an owner passes away. Personally, I’m the third generation of a family that is in the taxicab business. We’ve had the circumstance where elderly owners living in nursing homes had to be transported so they could be physically present for an inspection of their taxi by city staff. It was a ridiculous situation.

More recently, Toronto city council moved to legislate to end the practice of plates being bequeathed from one generation to another. As legislators yourselves, can you imagine a scenario where you would enact a provincial law prohibiting one generation from leaving assets or property to their heirs?

Mr. Zahakos: Some time ago, someone on Toronto city council thought it would be a good idea if all Toronto taxis were painted the same colour. Co-Op Cabs, Diamond Taxi and the other companies have spent much time and money developing our brands and corporate logos. Each of our cabs has a unique look. All of this would have been tossed out the window. Luckily, city council was advised that such a bylaw would not survive a challenge under the Municipal Act, as it would not meet any of the three criteria set out in that legislation. Thankfully, this idea, which would have required a change to licensing bylaws, went no further. Under Bill 53, there is nothing to stop city council from proceeding with this or something else equally ridiculous.

Mr. Bell: There are many other examples that we could list. However, rather than doing that, let us pose a question. If a licensing bylaw is not passed for reasons of public health and safety, nuisance control or consumer protection, why would it be passed? Surely these are strong public policy reasons. If the city wishes to introduce a new licensing bylaw or change an existing bylaw, there should be strong public policy reasons to do so. In the case of our industry, which is already so heavily regulated, we need those thresholds in order to ensure that future changes to our licensing system are made for legitimate and proper purposes.

Mr. Zahakos: We are aware that others in the taxi industry have spoken to a number of MPPs about other issues, including pickups at Pearson Airport and the fact that Bill 169 imposes onerous fines on Toronto taxis that pick up passengers there. We want to be clear, though, that the Toronto Taxicab Brokerage Association considers the issue of the new licensing bylaw regime under Bill 53 to be our single most important priority.

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Let me add another important point. Subsection 150(9) of the existing Municipal Act also states, “The total amount of fees to be charged for licensing a class of business shall not exceed the costs directly related to the administration and enforcement of the bylaw or portion of the bylaw of the municipality licensing that class of business.” In other words, licensing fees should continue to maintain a cost-recovery model.

We would like your assurance that once the City of Toronto Act is passed, this provision will remain in

place. The fees we pay to be licensed should not become a cash cow for the city or another form of tax. Unfortunately, we would have no freedom to pass on increased licensing fees to our customers without the approval of the same city that just raised our fees. At a time when the province is trying to get people to leave their cars at home, higher fees and fares would be counterproductive.

Mr. Bell: In conclusion, let us repeat for you that our concerns over this change to how and why licensing bylaws are passed are based on the real experience of our industry, the most closely regulated industry in Toronto. We've had to go to court with the city more than once in order to defend our interests. We and the city have spent hundreds of thousands of dollars in legal costs. We are certain that the intent of this bill is not to create more litigation in the courts. We speak to you today not in the hypothetical, but rather in the historical and the real. The taxi industry and, I believe from talking to them, other industries are relying on you as provincial legislators to ensure that Bill 53 sets out parameters for Toronto city council to follow when considering and passing licensing bylaws.

At a minimum, we would ask you to amend Bill 53 to include subsection 150(2) of the existing Municipal Act so that licensing bylaws must be for reasons of health and safety, nuisance control and consumer protection. Ideally, we would like to see that section strengthened even further, so that city council would not burden small businesses like ours with unnecessary regulations or excessive additional fees. We would also ask that subsection 150(9) be included in the City of Toronto Act.

We thank members for your attention and would be pleased to answer your questions.

The Chair: Thank you. You've left just over two minutes for each party to ask a question. Mr. Duguid, do you have a question or comment?

Mr. Duguid: Gentlemen, we appreciate your coming here today. We've had an opportunity over the last little bit of time to discuss some of your concerns. You certainly made me aware of some long-standing grievances that have gone on in the relationship between the taxi industry and the city. Certainly it's my hope, as the city moves forward, that the relationship between the taxi industry and the city can become much more co-operative and understanding. I hope that in the future that relationship will change for the better under the new City of Toronto Act. I recognize that the history you've had with the city probably taints your expectations as to where this particular industry and the relationship with the city will go.

The three areas you talked about, in terms of conditions in which fees can be applied—health and safety, nuisance control, consumer protection—are pretty obvious. I don't know if there are others or not, and I think that's the problem. We don't know whether the city may want to get into licensing some type of activity down the road that doesn't apply to one of these three areas because it's in the public interest to do that, and that's why we have taken a permissive approach. But my

understanding is that licensing still has to be on a cost-recovery basis. Are you of that understanding as well, or would I be mistaken?

Mr. Bell: Where we have concerns in both areas is that while it's mom and apple pie in regard to those three areas—public health and safety, public nuisance, consumer protection—their omission could potentially leave a situation where city council could become very creative. The omission of a framework in regard to setting municipal fees on a cost-recovery basis perhaps allows city council the latitude to become very creative in an indirect taxation or an indirect cost to be borne by the industry and eventually by the consumer.

The Chair: Mr. Hardeman.

Mr. Hardeman: Continuing with the former question, my understanding, as I read the bill, is that there is absolutely no requirement for cost recovery or only charging cost recovery on the licensing system. I think that's part of the present Municipal Act, but we have to recognize that Bill 53 does actually say that the Municipal Act will no longer apply in Toronto.

I would think that the concerns the parliamentary assistant expressed, that there may be other things the city needs and wants to license in the future—it would seem to me that if it's consumer protection beyond that, why would the city need the powers to license anything that had nothing to do with consumer protection, nuisance control or health and safety? It would seem that that's a pretty broad thing. I would question why it couldn't be included in the bill to say that those were the areas that licensing could include. I haven't been aware of any that wouldn't fit in that category.

I also thought it was interesting in your presentation when you talked about how formerly the city had discussed having colour for all the cabs so we would know what a cab looked like in downtown Toronto because they would all be the same colour. You said that they could come up with another less-than-legitimate idea. I would suggest that the bill actually includes the city being able to dictate the colour of buildings and the style of buildings in a neighbourhood. It really does go quite a way in giving the city powers that they presently don't have.

One question I do want to ask is the one you mentioned about the thousands of dollars that have been spent in court litigation over issues. How often does the city win those litigations?

Mr. Bell: Our most recent case has been a subject of litigation for about a year and a half. Our association was successful on a superior court level, and it was overturned at the court of appeal. That battle went on for about a year and a half. I know it cost our side about \$300,000. I'm sure it cost the city an equivalent amount, to the point that on licence fees renewal, the cost of litigation was one of the cost recovery factors; they put a surcharge on all businesses to pick up additional legal costs. In some senses we get to pick up both ends of the bill.

Mr. Prue: I just want to be clear here. You are the Toronto Taxi Brokerage Association. I would take it that

that is the business arm—maybe the lobby group—the association for the business owners.

Mr. Zahakos: No, that is for the brokerage association. That's for Diamond, Co-Op, Beck and Royal Taxi. We are the brokerages. Within our brokerage there are also owners, obviously.

Mr. Prue: But you don't speak—and this is what I'm trying to make clear—for the taxi drivers or the Ambassador cabs.

Mr. Bell: They are members of our brokerages, so certainly we try to represent what would probably work best for them, certainly in the area of increased costs or surcharges being applied upon a cab driver licence renewal. That would be an issue of concern. The same would go for owners' licences being increased.

Mr. Prue: The reason I'm asking that is this: I have been to at least half a dozen demonstrations around Queen's Park with taxi drivers—not so much owners—about Bill 169, about scooping in Toronto, about the airport limousines. You don't seem to be concerned about that. That seemed like such a huge issue to them.

Mr. Bell: Certainly we were very concerned. We participated in discussions with some of the ministers in regard to Bill 169. We did go and see them. But some of our concerns in the area of enforcement in the city of Toronto—when Bill 169 was already passed, for our presentation we focused on our areas of concern on Bill 53.

Mr. Prue: In terms of the licence fees—

The Chair: You have about 10 seconds left.

Mr. Prue: How much have they gone up in the city of Toronto since amalgamation? Have they gone up substantially? Have they stayed about the same?

Mr. Bell: They've gone up significantly: about 30%.

Mr. Zahakos: They went up twice last year, and the amount of inspections have gone down. The service that we're paying for has actually gone down but our fees have gone up.

The Chair: Thank you, gentlemen, for being here.

SHOPPERS DRUG MART

The Chair: Our next delegation is Shoppers Drug Mart. Welcome. As you speak, if you could introduce yourselves and the organization you speak for, for Hansard. You'll have 15 minutes. If you leave time at the end, we'll be able to ask questions about your presentation.

Ms. Barbara Dawson: My name is Barbara Dawson and I am vice-president, corporate affairs, at Shoppers Drug Mart. With me today is the vice-president, legal affairs, Richard Alderson.

Madam Chair, distinguished committee members, Shoppers Drug Mart appreciates the opportunity to speak to you today upon considering Bill 53.

In the interests of time, you will note that our spoken remarks will not exactly match the printed document you have in your hands. We have endeavoured to hit the

highlights and leave the greater detail for your reference at a later date.

1700

Our comments today are limited to two provisions found in Bill 53. They are the provisions which, when read together, would authorize the city of Toronto to require business establishments to be closed at any time, specifically schedule A, subsection 97(1), and would exempt the application of the Retail Business Holidays Act to the city of Toronto, schedule B, section 12.

While only several provisions in a bill which spans close to 300 pages and addresses many very important municipal issues, Shoppers believes it is important to be here today for several reasons.

First, the government has stated that it will be introducing amendments to the Municipal Act in the near future and that these amendments will incorporate many of the same amendments found in this bill. Our presence today is premised on the assumption that in the near future not only will Toronto enjoy these new powers, but so too will all municipal councils throughout the province. For this reason, we feel it is critical to register our comments now, and not later.

While supportive of the government's policy goals to provide municipalities with the powers they require, we believe that as currently drafted these new provisions will lead to uncertainty and a possible patchwork situation throughout the province.

Today, Ontarians have certainty in knowing they can have access to a pharmacy to have their prescriptions filled, over-the-counter medications dispensed and other health-related needs met, 365 days of the year, regardless of where they live. By transferring these powers to municipalities, as proposed in Bill 53, and exempting the RBHA, this certainty will be lost.

The province could be left with a situation where some communities have access to pharmacies every day of the year, while others have more limited access. As a consequence, this patchwork situation would lead to unintended pressures on other parts of the health care system, e.g. emergency rooms, the Telehealth system and primary care access points.

With amendments to Bill 53 and subsequent Municipal Act reforms, this patchwork and the resulting pressure on Ontario's health care system can be avoided. In the few minutes we have, we will explain our concerns. But first, a little bit of background on Shoppers Drug Mart.

Shoppers was founded in 1962 by Toronto pharmacist Murray Koffler, who believed it was possible to build a national organization of pharmacies that emphasized personal service within each local community. Today, there are more than 950 retail drug stores serving these local needs throughout Canada.

In Ontario alone, there are 496 Shoppers Drug Mart stores, with each store being owned by a pharmacist, called an "associate," who is part of the community and has a personal understanding of the health needs of the people within it. Thanks to this concept, each store truly is an extension of the community that surrounds it.

In 2004, Canadians entrusted Shoppers to fill over 60 million prescriptions for them and their families, 30 million of those prescriptions alone in the province of Ontario. Pharmacy services is the top priority of Shoppers Drug Mart and remains the foundation on which we were built and the way in which our business will continue to evolve.

Shoppers Drug Mart stores are located throughout the communities of Ontario where people live and work, and many are adjacent to medical clinics or close to hospitals. More importantly, in Ontario over 150 stores are open to midnight or are open 24 hours each and every day, meaning that a HealthWATCH pharmacist is always available in person or by phone when other health care professionals might not be. Our main business is pharmaceutical, therapeutic, hygienic and cosmetic products and services, all of which are related to the health and well-being of Ontarians.

Shoppers' pharmacist associates play an important role as accessible front-line providers of health-related information, such as answering questions and offering advice on emerging public health issues like SARS, West Nile and the flu. They also provide information and advice to those who man both the 24/7 Telehealth services call line and also the patients who are referred to them by that service, especially on the eight public holidays of the year. Being available in this manner helps to ensure these patients do not unnecessarily go to emergency rooms for help and support during the hours when other health care practitioners are not available.

The government acknowledged the unique contribution of pharmacy in the Minister of Health's recent introduction of Bill 102, the Transparent Drug System for Patients Act, which specifically recognizes the role pharmacists play in patient care.

Shoppers Drug Mart is supportive of the government's objectives of providing the city of Toronto, the province's economic engine, with the tools and powers it needs to govern effectively today and tomorrow. While we are cognizant of the important public policy debate that needs to take place to ensure the right balance is struck in Bill 53, we take no issue with the inherent policy goals or, for that matter, other provisions in the bill.

In anticipation of there being similar proposals in the Municipal Act reforms anticipated later this spring, we believe the proposal to exempt municipalities from the provisions of the RBHA may have unintended consequences for Ontario citizens' access to their health care system.

Mr. Richard Alderson: Today, for 357 days of the year, the province and municipalities share responsibility for regulating store hours, and from our perspective, for the most part this has worked effectively. For those 357 days of the year, the Municipal Act permits municipalities to regulate store hours in the after-6 p.m. period. Municipalities can also declare civic holidays and regulate store hours on these days.

For the eight public holidays during the year, the Retail Business Holidays Act governs. This act estab-

lishes the general rule that retail businesses are to be closed on these days of the year. The RBHA also establishes a number of exceptions to this rule, one of them being for pharmacies. Others include small stores, art galleries, amusement parks and, of course, the tourism exemption, which we are not addressing today.

The pharmacy exemption permits pharmacies to remain open so long as they have less than 7,500 square feet of retail selling space. This exemption, in one form or another, goes back to the days when the RBHA also governed Sunday store openings, which most of you probably remember. From the mid-1970s, the exemption to the general rule that stores must remain closed, originally on Sundays and holidays, recognizes the unique professional services of pharmacists and has enabled them to remain on the front line of the health care delivery system across Ontario.

Today, the RBHA provides an element of certainty and uniformity to Shoppers Drug Mart and other pharmacy operators and ensures that most communities throughout Ontario, both rural and urban, have adequate and accessible pharmacy services on these public holidays.

From the government's perspective, the legislation ensures Ontarians can have access to pharmacies for prescription needs and over-the-counter medication on these days of the year. On these holidays, many of our pharmacies also support Ontario's Telehealth program, which operates 24/7, 365 days of the year. On each of these stat holidays, Shoppers dispenses an average of 32,000 prescriptions—that's about a quarter of a million scripts a year just for these eight days—and sells over 100,000 units of OTC products, clear evidence that there is patient demand that Shoppers and other pharmacies are filling by remaining open on these days.

Bill 53 would permit the city of Toronto to pass bylaws requiring business establishments to be closed to the public at any time. The only limitation to this power is with respect to goods or services in connection with prepared meals or living accommodation. As well, the bill states that the RBHA would not apply to the city of Toronto. Looking forward, we anticipate the government will seek to devolve similar powers to all municipalities, as you've also heard today.

The provincially established exemption to the general rule in the RBHA has served Ontarians well. Moving to a system where eventually—and at the risk of being repetitive, this is under the assumption the government will move to delegate these powers to all municipalities—all municipalities have the ability to limit pharmacy openings on these days of the year could lead to unintended consequences, if municipalities move to restrict openings and thereby limit access to a necessary health care provider on these days of the year. We believe there is an overriding provincial interest in ensuring that pharmacies can remain open 365 days of the year to serve all communities throughout the province.

In stating our concerns in this way, we are not saying that we expect municipalities will exercise their powers

irresponsibly or in a way that does not best serve the people in their communities. However, as it currently stands, the bill, if passed and extended to all municipalities, will most certainly lead to uncertainty for a period of time and it could lead to municipalities passing bylaws in response to local issues that might undermine a provincial interest in ensuring access to health care services to all Ontarians 365 days of the year.

We note in this matter the approach taken in Bill 53 to restricting smoking in public places that explicitly places priority on having the most restrictive smoking laws possible throughout the province. In so doing, the province has already established the floor, so to speak, through its Tobacco Control Statute Law Amendment Act, which prohibits smoking in all workplaces and enclosed public places in the province. Bill 53 would permit municipalities to pass bylaws which are even more restrictive but not less so.

1710

As the government has recognized that restricting smoking has an overriding provincial health interest, we believe that ensuring pharmacies can remain open on 365 days of the year should also have similar treatment and recognition in this bill. A provision that ensures a floor for pharmacy openings on 365 days of the year would accomplish this goal. It would recognize the critical role that pharmacies play in serving Ontario's health care system and the provincial interest in ensuring pharmacies remain open on 365 days of the year and ultimately will ensure provincial uniformity and certainty re access to prescriptions and OTC medications.

In considering our proposal, we'd like to raise a related issue for your consideration. Currently, the RBHA has an exemption for pharmacies of 7,500 square feet. This was an exemption that was in place in the late 1980s after a long history of increasing size. The nature of pharmacy retailing has changed dramatically due to forces such as big-box concept stores and grocery and department stores moving into pharmacy retailing. Today, smaller independent pharmacies have either closed or been sold, or cannot afford or just don't like to open on Sundays or other stat days. Today, the size of pharmacies has grown. Shoppers is moving into and serving smaller communities, and the size of our stores is growing.

For these reasons, Shoppers believes that today the 7,500-square-foot restriction may have the unintended result of restricting Ontarians' access to health care services, such as prescription drugs.

Further, as the retail landscape continues to evolve and other pharmacy retailers, along with Shoppers, continue to increase their store size, the number of patients and citizens who need access to this area of health care delivery will be expanding as well.

Ms. Dawson: Shoppers' recommendation to the standing committee members and to the government is as follows:

That Bill 53, and any subsequent bill to amend the Municipal Act to devolve powers to municipalities,

establish and recognize a provincial floor for pharmacies to remain open on 365 days of the year; that municipal bylaws cannot restrict this floor; and that the only criteria for determining a pharmacy that is permitted to remain open on these days are that the pharmacy is accredited under the Drug and Pharmacies Regulation Act and that the principal business of the pharmacy is the sale of goods of a pharmaceutical or therapeutic nature or for hygienic or cosmetic purposes.

In summary, Shoppers Drug Mart has always valued the opportunity to have input on important public policy in Ontario, in particular as it relates to health care. We have provided what we believe to be a constructive recommendation for moving forward with this and a future Municipal Act reform bill and know that committee members and the government will give our recommendation very serious consideration.

Thank you for your time and attention. We would now be happy to respond to any questions you might have.

The Chair: I'm sorry, but you've virtually exhausted your time. There isn't enough time for everyone to ask questions. We appreciate you being here today. Thank you very much.

MOTION PICTURE THEATRE ASSOCIATION OF ONTARIO

The Chair: Our next delegation is the Motion Picture Theatre Association of Ontario. Mr. Hutchinson?

Mr. Tom Hutchinson: Yes.

The Chair: Welcome. If you could identify yourself and the group you speak for. When you begin, you will have 15 minutes, and if you leave us time at the end, we'll be able to ask you questions. We have your package.

Mr. Hutchinson: Thank you, Madam Chairperson. I'm Tom Hutchinson and I'm here today to speak on behalf of the Motion Picture Theatre Association of Ontario.

The Motion Picture Theatre Association of Ontario is a non-profit association of theatre owners whose purpose is to promote the general welfare of motion picture exhibitors. We have 35 members in Ontario, who operate the majority of the cinema screens in the province.

Our association represents theatre operators, the people who project movies, sell the concessions, sweep the floors and pay local taxes and fees. We're not Hollywood studios or movie distributors. In fact, we typically see less than 40% of the revenue from a ticket sold at our theatres.

There is a misconception that the movie industry is awash in money. The opposite is true. The movie theatre industry is suffering from declining attendance, sales and box office revenues. In fact, there's been a 14% decrease in attendance since 2003, and Statistics Canada reports that movie theatre profits fell 15.8% in 2003-04.

Exhibitors are experiencing enormous competitive pressure from other entertainment destinations and in-

home entertainment options such as DVDs, videos, online streaming, pay-per-view, etc.

In order to attract customers back to theatres, admission prices have been reduced. The adult admission to a new, full-featured theatre in 2000 was \$13.95; today tickets are \$10.95 or less. Older theatres have admission prices that are even lower, as low as \$4.25 for some performances.

All of this comes at a time when theatres are facing significant capital investments in order to keep up with technology and to comply with accessibility standards imposed by the government. For example, within five years, projection will have to be transferred to digital technology at a cost of approximately US\$150,000 per screen for the equipment alone. If you multiply that across the 1,000 screens in Ontario, you can see the magnitude of this investment.

The challenges faced by our members are considerable, and Bill 53 threatens to further exacerbate this critical situation.

We understand that Bill 53 is meant to create enabling legislation that provides the city of Toronto with resources consistent with its needs as the sixth-largest government in the country. As an industry association, we support any move to create a stronger, safer and more vibrant city in which our members can operate.

If the city of Toronto adopts an entertainment tax, our patrons will be obliged to pay an entertainment tax to the city, in addition to the amusement tax they already pay to the province. In addition to this entertainment tax, Bill 53 also allows for levying taxes on parking, liquor and tobacco sales. The compound effect of taxes on an evening out at the movies, which includes parking, dinner and beverages, will act as a further deterrent to our guests from leaving their homes to visit theatres.

Family-oriented theatres are under pressure from all of the in-home movie technologies. Increasing the cost of a movie ticket while these other methods of movie viewing continue to drop in price will mean that families will be forced by cost to view movies at home rather than going out as a family unit.

Older, neighbourhood family cinemas and repertory theatres, which charge much lower ticket prices, would see an attendance loss from double taxation. Many people who frequently attend neighbourhood cinemas have limited income and enjoy the proximity and price of their local cinema.

A municipal entertainment tax levied on top of a provincial amusement tax will make Toronto a marginal place in which to operate and will necessitate that our members adopt cost-reduction measures and reduce their capital spending in the city. As leases expire over the next six to eight years, it will also be a factor in lease renewal decisions.

These cost-reduction measures may also affect our franchisees and our suppliers, including advertising and print agencies, distributors, newspapers and concession food and machinery suppliers. Fewer patrons for cinemas would mean workforce reductions, first in the part-time

youth employment that we provide and later in full-time jobs.

MPTAO members have made a significant contribution to the province in terms of employment, capital investment, community building and through tax revenues. In Toronto alone, MPTAO members create over 1,600 jobs, including many jobs for youth. They lease over a million square feet of commercial space and, in 2003, paid \$9.7 million in sales tax on concessions. Last year alone, MPTAO members paid \$6.7 million in amusement taxes to the provincial treasury and some \$23 million in property taxes.

Movie theatres also play significant roles in their communities. Not only do they run philanthropic programs, but our theatres are also used for school classes, religious services, charitable events and corporate meetings. As well, our theatres are important to families in the communities and are frequently used for birthday parties and family outings.

Given the challenges faced by the industry and the possible implications of an entertainment tax, the association is asking the province to amend the City of Toronto Act to remove the provision for a municipal entertainment tax. If this is not possible, then the Motion Picture Theatre Association of Ontario requests that all committee members urge your colleagues at the Ministry of Finance to abandon the provincial entertainment tax. Our industry cannot withstand three levels of taxation on each movie ticket.

Thank you for your time. I'll try to address any questions.

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The Chair: You've left about three minutes for each party to ask questions, beginning with Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. I guess the number one issue for people who run theatres is the ability to put in the entertainment tax. The government has decided that the three taxes that are going to be allowed to be imposed are the tax on alcohol, the tax on cigarettes and the entertainment tax. I see in your presentation, "A municipal entertainment tax levied on top of a provincial amusement tax will make Toronto a marginal place...." You're making the assumption that the province isn't going to immediately remove their entertainment tax when they make room for the municipal tax. I'm sure the government side will tell us that that was their intention, that they don't think it would be fair to see a movie ticket taxed by three levels of government. My assumption is that they're transferring that taxing power to the municipal level. I stand to be corrected by the parliamentary assistant, but I presume that they would not want to tax the tax. If the city wants to tax it, the province would quit taxing it. I say that somewhat with tongue in cheek; I can assure you that's not going to happen.

But I think it points out the challenge that we have with that taxation when you look at what could happen in the city of Toronto. If you have a theatre on one side of Steeles Avenue and there's extra tax on it, and if you go

to the other side and there's no extra tax on it, I think likely most people who are going to the theatre in that area would be going to the cinema on the north side of Steeles Avenue, the same as it would be in Mississauga. Would you see as a big problem the transfer of the public going from the city of Toronto, if there were taxes on it, to outside of Toronto, or are most people inclined to stay at the theatre that they live closest to?

Mr. Hutchinson: I think there's a lot of confusion in the minds of the public. They assume that ticket prices will be the same, or very close, regardless of the venue that they attend, and they are at the present time. But if individual municipalities chose different rates, then the admission prices at theatres located in those municipalities would differ, which would be confusing to the public. It would also be confusing to the theatre operators to have to do multiple sets of paperwork, one for each theatre, depending on where it was.

Mr. Hardeman: I just want to point out that the legislation before us applies only to Toronto, so in fact Mississauga can't charge the tax even if they wanted to. So we are going to have that disparity; we're going to have tax in one place and not the other.

Mr. Hutchinson: Another concern that we have is that the province was attempting to be fair when it imposed the tax to begin with. There is a shelf of \$4. Tickets sold with a price lower than \$4 are not taxed. Tickets sold at a price above \$4 are subject to the 10% tax. I believe that was done in order to allow people who didn't have an awful lot of money to still go to cinemas. They perhaps couldn't go to the finest cinemas, but they could at least go to their neighbourhood cinemas without having to pay the tax.

The Chair: Thank you, Mr. Prue.

Mr. Prue: Just a question. A lot of the neighbourhood cinemas, the ones that used to be there in the downtown core, or even out into East York where I'm from, are not there anymore; they're gone. Where I see cinemas today are in the 905 and, to a lesser extent, a few in Scarborough and way up in North York, but they are not really where the population is downtown anymore. Is that financial or is that something to do with tax?

Mr. Hutchinson: That's a very complicated question. Part of it is financial. It's very expensive to be downtown, from a taxation standpoint and also from a construction and land value standpoint. The concept adopted by the major theatre chains eight or nine years ago was the big box concept. So they have located in areas where there is sufficient land for big boxes, parking and all the rest, which requires driving, and they're generally not accessible to transit and things like that.

Mr. Prue: I'm just trying to understand. I know there are still a few small, tiny neighbourhood theatres. There's one in the Beach called the Fox that's been there forever. There's no movie theatre whatsoever in the old confines of East York—not one. I'm just wondering who's going to be hurt here if the city of Toronto does this. I guess they would hurt the likes of the Fox and maybe the five or six or 10 other little ones like that in Toronto. The big boxes are all out in Mississauga anyway, or am I wrong?

Mr. Hutchinson: There are certainly large theatres in Toronto.

Mr. Prue: There are a few.

Mr. Hutchinson: Yes. Not to speak for myself, but my company operates three theatres in the city of Toronto that are well within the boundaries, not on the outskirts of Toronto.

Mr. Prue: How much of a disadvantage would this put—how much are we talking per ticket that would be added to, say, a \$10 ticket, if the city of Toronto were to have an entertainment tax? I know it's open-ended. Would it be like an extra 50 cents or \$1?

Mr. Hutchinson: The province's existing tax is 10%.

Mr. Prue: So it would be \$1.

Mr. Hutchinson: On a \$10 ticket it would be \$1.

Mr. Prue: If the city did that, it would up the price. Certainly, that's not enough to warrant the drive to Mississauga, but it could have a really big impact on some of the big boxes that are in Scarborough, North York and Etobicoke. I would think those are the ones where you could just cross the line and save the dollar. Nobody's going to, in my mind, leave downtown to go all the way to Mississauga to save a dollar. It costs more than that to get there.

Mr. Hutchinson: No, and I don't think that was one of the points that I think are important. I believe that if this legislation proceeds, it will be asked for by other municipalities as well, so the playing field will be somewhat level. But I don't think we're really competing against another theatre; we're competing against DVDs and videos and all sorts of technologies, the price of which is coming down at a remarkable rate. The window between cinema release dates and DVD or other forms of release is getting shorter all the time. What we would like to do is keep the price reasonable so that a family can attend as a family group.

The Chair: Thank you, Mr. Duguid.

Mr. Duguid: Thank you very much. I really appreciate your taking the time to share with us your concerns and your deputation here today. I understand what you're saying about the movie theatre industry and the competition involved, and DVDs, Internet and whatnot, but I also would think that a strong local economy in Toronto is important to you as well.

Mr. Hutchinson: Very important.

Mr. Duguid: Because if people aren't working, if they're not spending, then that's when they're going to make the decision that instead of going out to the movies and buying popcorn and pop and all that stuff, they're going to stay home, rent the video and economize that way. It might not be as much fun, but that's what they're going to do. One of our goals through this legislation is to try to give Toronto the authority, the powers it needs to be competitive with other cities its size internationally, access to alternative sources of revenue that other cities its size have and access to the ability to restructure itself that it doesn't have right now. Notwithstanding your concerns about the entertainment tax issue, which I recognize, are you supportive of the other approaches in this bill to try to build a stronger Toronto?

Mr. Hutchinson: Absolutely.

Mr. Duguid: I appreciate that.

Mr. Hutchinson: Our major concern is the triple taxation on a movie ticket.

Mr. Duguid: Triple taxation?

Mr. Hutchinson: Federal, provincial and municipal.

Mr. Duguid: I can understand that. Mayor Miller was here earlier, not today but at our previous meeting last week. We asked him the question, is he looking to raise taxes at this point in time, is he eyeing this with a view to raising taxes? His response was no, they're going to use these tools very responsibly and they would certainly consult with the people of Toronto and industry and business before they utilize these kinds of tools. I recognize that doesn't alleviate your concern, but does it bring you some comfort to know that? That's my first question.

The second question is, I haven't heard anybody at the city level talk about a desire to use an entertainment tax up till now. Have you heard that from municipal politicians?

Mr. Hutchinson: I haven't personally heard that from Toronto municipal politicians. We have run into it in other locations, other municipalities. I think the likelihood is certainly there that a tax on entertainment would be considered at some time in the future.

The Chair: Thank you very much for being here today.

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TORONTO OFFICE COALITION

The Chair: Our next delegation is the Toronto Office Coalition. Welcome. As you settle yourself, I'll just remind you that you have 15 minutes. Mr. Fleet, I understand you're a former member of the Legislature and a former member of this committee.

Mr. David Fleet: That's correct.

The Chair: Welcome.

Mr. Fleet: Good afternoon, all. I'm here with Dr. Juri Pill, who will be making the primary submission on behalf of the Toronto Office Coalition.

Dr. Juri Pill: I'm Juri Pill. I'm the chair of the Toronto Office Coalition. I'd like to thank you, Chair and members of the committee, for inviting us here today. I'm going to read our statement—you have copies of it, I think—to present our views on Bill 53, the Stronger City of Toronto for a Stronger Ontario Act.

This new act is an historic document and recalls some of the great legislation that once made Toronto the envy of the world in terms of urban governance and policy. One can only hope that Bill 53, as implied by its title, will lay the foundation for the resurgence of Toronto as the economic engine of Ontario and Canada, and once again make Toronto the envy of the world in terms of urban management. Unfortunately, this is unlikely to be the case because of a serious flaw in the proposed legislation. The Toronto Office Coalition is here today to address this serious flaw and to request that this fatal flaw be eliminated from Bill 53 before it's proclaimed.

As you are aware, the Toronto Office Coalition represents the interests of 16 property companies that own 55 million square feet of office space in Toronto and serve close to 300,000 jobs, the majority in the downtown core. Our major concern is that the property taxes paid by these buildings are now the highest in North America—higher than Boston, New York or Chicago, and two to three times higher than the taxes paid by office buildings in the municipalities surrounding the city of Toronto. Our concern is twofold: As owners, we feel that it is unfair for our buildings to be singled out this way, but more importantly, we feel that it is bad policy that is undermining the economic efficiency of the greater Toronto area as a whole. It is also contrary to many of the stated objectives of this government, and it is the latter concern we want to address today.

The Toronto Office Coalition has been concerned about this dysfunctional property tax for some time, and about a year ago we commissioned the Canadian Urban Institute to carry out a study to examine the results of this dysfunction, what the effects have been of this unusual tax policy. That study was released in June 2005, and it was entitled *Business Competitiveness in the GTA: Why Toronto is Losing Ground*. As an aside, that study has been awarded the prestigious excellence in planning award by the Canadian Institute of Planners in the category of economic development. That award will be presented at the World Planners Congress in Vancouver on June 19 this year. We're very proud to be associated with this study, which drew one essential conclusion: The commercial tax imbalance in the greater Toronto area is one of the causes of urban sprawl and is undermining smart growth. From 1999 to 2005, there were 89 new office buildings, totalling 12.5 million square feet, built in the 905 area and only seven buildings, totalling 1.6 million square feet, built in the city of Toronto. According to the *Toronto Star*, the transit-oriented city of Toronto has lost about 100,000 jobs over the past 15 years, while the auto-dependent surrounding area has gained about 800,000 jobs. This is not smart growth.

The Canadian Urban Institute's essential recommendation was very simple: "The province should impose a single uniform commercial tax rate across the region in order to reduce current inequities that are distorting the office market in the GTA." While this is a very simple, logical and straightforward proposition, its achievement in the foreseeable future is problematic due to a simple, straightforward and logical question: Who would pay the resulting revenue shortfall if the dysfunctional commercial taxes in Toronto were indeed brought down to the level of the 905 region?

In order to answer this question, the Toronto Office Coalition commissioned the prominent urban economist Dr. Peter Tomlinson to review the possible options from a professional point of view as an economist. His answers are incorporated into a report that he released in January of this year entitled *A Level Playing Field by 2009: Achieving Property Tax Parity for Toronto Businesses*. Both this report and the aforementioned Canadian Urban

Institute report are available in full on the Toronto Office Coalition's website at www.torontoofficecoalition.com. Policy staff from both the provincial government and Her Majesty's loyal opposition have had the opportunity to read these reports and discuss them with the authors and with the Toronto Office Coalition. I hope that the members of this committee have had a chance to review them, as we believe that these reports are very credible as policy documents.

Dr. Tomlinson's examination of the magnitude of the GTA tax gap is one of the most thorough and current studies of the problem. He made three basic recommendations: (1) Financial responsibility for social assistance and social housing should be uploaded to the federal government; (2) The Ontario government should bring all provincial business property taxes for education down to the level currently paid by the 905 area by 2009; and (3) The Ontario government should insert a clause in the new City of Toronto Act limiting the annual increase in Toronto's business property tax rates. The three recommendations need to be considered together. Together, they would remove the dysfunctional tax inequity we're addressing.

But it's the third recommendation we're here to address today, and it's a necessary but not a sufficient condition for achieving a level playing field on commercial taxes in the greater Toronto area. To not include a clause limiting any further commercial tax increases of any sort in Toronto would leave a fatal flaw in the new act. The current commercial real estate tax rates in Toronto are the highest in the greater Toronto area and are five times Toronto's residential tax rates overall when the education portion is included. On the other hand, the residential tax rates in Toronto are the lowest in the GTA. There is a very simple reason for this disparity: Office buildings don't vote. It is far easier politically to increase commercial taxes than residential taxes. As the 905 belt matures over the next 50 years, it may well follow Toronto's historic path of gradually increasing commercial taxes more than residential taxes.

By way of example, increasing them at 2.5% annually compounded—the wonders of compounding—would bring them to Toronto's level of disparity in about three or four decades, depending on which municipality we're talking about. But that would be a very slow and dysfunctional way of achieving commercial tax parity across the GTA. Moreover, the offices would probably all move to Calgary in the meantime.

The reality is that if Toronto's overall property tax burden were decreased through uploading to the senior levels of government, and if the government of Ontario were to follow recommendation (2) above with respect to the education tax rates and reduce the education portion of the business tax to the 905 level, the Toronto council would backfill the tax room created by this commercial tax reduction by increasing their own taxes on business. This has been the historical trend, precedent and experience and is not meant as a criticism; it's a fact of life. Office towers don't vote, while residents do, and that's simply a democratic reality in the short term.

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In the long term, it leads to a loss of jobs and potentially a situation like New York's in the 1970s, when it teetered close to bankruptcy and had to be rescued by the US federal government. Toronto is nowhere near that state yet. I don't mean to exaggerate by any means, despite the loss of 100,000 jobs in 15 years. However, to guarantee that it does not happen, the Toronto Office Coalition has a very simple request: This committee should amend the Stronger City of Toronto for a Stronger Ontario Act to truly make both the city of Toronto and the province of Ontario stronger by including a clause that limits Toronto's total tax rate increases on commercial buildings, including any new taxes permitted by this act, to zero until the total commercial tax rates in Toronto reach the average level in the surrounding 905 area.

Thank you. I'm open to questions.

The Chair: You've left about two minutes for each party to ask a few questions, beginning with Mr. Prue.

Mr. Prue: First of all, the city of Toronto and the mayor advocated earlier this year something about holding increasing property taxes for residential versus commercial. Do you think they're going in the right direction? Obviously you must, but do you think they've gone far enough?

Dr. Pill: Yes and no. In principle, it's the right thing to do. We did appear before a city committee expressing that, and it was a very courageous first step. They are aware of the issue. But their proposal, their policy, would lead to commercial taxes reaching what we would consider a sustainable level—that is, close to the 905 level—in a period of about 14 or 15 years. The new city of Toronto is now approximately eight or nine years old, and over that period of time there in fact has been some, as I mentioned, backfilling tax room created by the provincial government. Our position has been, after the two studies I mentioned, that the inequities should be removed within four years. We're talking about 2009. That was the position we expressed at the city, that in principle it's the right direction but in practice, by the time it reaches the right level in 15 years, history indicates that the results may not be what the city expects in terms of the hollowing out of the core.

Mr. Prue: The previous Conservative government under Mike Harris talked about bringing all provincial business property taxes for education down to a certain level, that Toronto's would not—

Dr. Pill: Yes.

Mr. Prue: I haven't heard much about that. How far along on that are we?

Dr. Pill: It moved partway. In fact, it did remove quite a bit of the inequity but it has ceased. We have taken the position that it should continue. In fact, Dr. Peter Tomlinson's report indicates that there are cities in Ontario that suffer from this sort of tax abuse far more than even the city of Toronto. But the 905 belt is very well off with respect to that particular tax.

Mr. Prue: Thank you. The zinger was at the end.

Mr. Jean-Marc Lalonde (Glengarry-Prescott-Russell): Thank you for your presentation. On page 2, second paragraph, you refer to a commercial tax rate across the region. Did you refer to the provincial education commercial tax in that section? You came back, at the bottom of section 2, with "property taxes for education" should be at the same level as the 905. That is a concern of a lot to people in different areas of Ontario. If you look at Parry Sound, for example, for a \$500,000 assessment, their tax rate is \$4,700, compared to you people, who are probably in the \$20,000s.

Dr. Pill: Our ratio is about 2.2, and there are cities that are far worse off in Ontario. In fact, we intend to work with the Ontario Chamber of Commerce on this issue because Kingston, North Bay, London and Windsor all have the same issue. The provincial education tax is out of line.

Mr. Lalonde: One point I have—

Dr. Pill: Sorry. The deputation here simply addresses one particular recommendation that Dr. Tomlinson made with respect to an amendment to Bill 53.

Mr. Lalonde: We did recognize that some presenters last week were referring to a motel or hotel room, for example, in the 905 area. They did include I guess the education tax. The cost over there would be \$1,700, compared to \$8,000 in the city of Toronto. So the municipal tax rate is controlled by the municipality, but I fully agree that the education commercial tax is set by the province.

Dr. Pill: From a competitive point of view and for reasons of Smart Growth and stopping sprawl etc., the logical thing to do is what the Canadian Urban Institute suggested, which is to have an equal tax for all commercial buildings in the GTA. To achieve that, the level of disparity that the city of Toronto commercial buildings have—about two thirds of that is due to the property tax of the city and one third due to the inequity imposed by the provincial education tax.

Mr. Lalonde: Thank you.

The Chair: Mr. Hardeman.

Mr. Hardeman: Thank you very much for the presentation. I was kind of taken at the end by the recommendation of what we should do, to include a clause that limits the total tax rate increase for commercial buildings in the city of Toronto.

Recognizing that this legislation is intended to give more powers or more responsibility to the city—that's what the minister told us when he presented the bill to the committee—and also recognizing that the disparity that we have in Toronto that's causing the problems you spoke of in your presentation is based, as you mentioned, on the fact that the residential tax rate is not as high as it is elsewhere, because that's the class of property that the city is more inclined to be connected to than the other sections, what we've seen is that Toronto is the area where the disparity between the two or three classes of property has grown faster than anywhere in the province.

Now, recognizing that the provincial government has just, in this past year, decided to take off the hard cap, so that the spread between the two is now again allowed to

grow, as opposed to what it was before, where they could not increase the industrial-commercial and increased the gap between the two, what's your coalition's expectations or hope, or what do you think your possibilities are of getting that included in this legislation, that they would do exactly what the government and the city have been working against for the last number of years?

Dr. Pill: Sorry, I don't understand the question.

Mr. Hardeman: In simple terms, why would you think that the government or the city, either one, has any interest in doing what you're suggesting when in fact they have both been working against that in the past number of years?

Dr. Pill: Because it's the right thing to do, and I don't have to get elected.

Mr. Hardeman: Very good. Thank you very much.

The Chair: Thank you, gentlemen, for being here today.

Mr. Prue, you did your question?

Mr. Prue: Yes.

The Chair: Okay. I lost track. Thank you very much.

URBAN DEVELOPMENT INSTITUTE/ONTARIO

The Chair: Our next group to see us is the Urban Development Institute. Welcome, Mr. Rodgers. As you get yourself settled, you know how this works. You get 15 minutes. If you leave some time, we'll be able to ask some questions. We are just getting your handout.

Mr. Neil Rodgers: I'll start. Good afternoon, Madam Chair and members of the standing committee on general government. My name is Neil Rodgers. I am the president of the Urban Development Institute of Ontario. We are pleased to discuss our views with you today on Bill 53.

UDI has joined with the Ontario Home Builders' Association and the Greater Toronto Home Builders' Association to present our recommendations to the government on this important piece of legislation. Our joint recommendations are offered to the province with the understanding that the province, the city of Toronto and our industry share the same goal: enabling Toronto to remain a strong and vibrant, world-class city and to compete effectively in the global economy.

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The development and building industry plays a crucial role in the economies of both the city and the province and is critical to the sustainable growth of both. Our industry directly employs approximately 350,000 workers and has expanded at a rate of 8.9% per year—twice the annual growth rate of the Ontario economy as a whole over the past few years. This economic growth facilitates the province's ability to invest and deliver quality health care, education and infrastructure that Ontarians have come to expect.

UDI understands that in order to effectively compete in the global economy, the city must be fiscally sustainable. Furthermore, we acknowledge that the city has

come of age with respect to certain powers and authorities. We can all agree that the city should not need Queen's Park's approval to review and approve city decisions in a great many circumstances.

However, we submit that the overall shift in responsibility and powers contemplated within the proposed legislation is significant and may have a number of unintended negative consequences. Bill 53, if enacted as currently drafted, has the potential to hinder a number of provincially stated key growth management objectives as an example. As well, the authority in the bill enabling the city to establish additional taxes, fees and charges will provide further disincentives to live and do business in the city but will not resolve the city's structural fiscal problems.

The development industry supports fiscally sustainable municipalities. However, we submit that all levels of government should operate within the existing total tax envelope, and that the province needs to investigate other tools to address the city's fiscal challenges that do not increase the total burden of taxes, fees and charges paid by Ontario taxpayers. On their own, the limited financial tools made available to the city through Bill 53 will not resolve the city's structural fiscal and financial challenges.

Analysts have suggested that an additional \$50 million could be raised using the revenue-generating powers granted to the city within Bill 53—a far cry from the now somewhat annual request in the range of \$200 million to \$500 million made by the city during their budget deliberations. The incremental changes to the city's revenue-generating ability contemplated within the bill have the power to discourage investment, but cannot solve their long-term financial challenges.

UDI submits that what municipalities need is for the cost of social services to be uploaded back to the province. Simply put, the Ontario government should take back the responsibility for all income redistribution measures, perhaps beginning with Ontario Works. This would alleviate the financial pressures on the municipalities, enabling them to undertake their core responsibilities and serve their citizens better.

In the rest of Canada, provincial governments take responsibility for income redistribution programs; Ontario is the odd province out. We submit that this is the greatest challenge facing the city and other Ontario municipalities, and no amount of tinkering at the edges will overcome the mismatch of municipal responsibility for income redistribution programs and municipal taxing and fiscal generation powers.

Increased revenue-raising powers through additional taxes, fees and charges and the granting of broad, permissive regulatory powers pose a serious threat to the long-term economic health of the region and the city. Raising the cost of living and doing business in the city will clearly diminish the city's ability to compete in the global marketplace.

UDI believes that if one of the primary goals of a program is to redistribute income, it should be funded by

the province, which has access to income and consumption taxes. Many municipal leaders have agreed with this premise. I won't read them, but I offer you two quotes raised by Mayor McCallion and Mayor Miller which basically speak to this issue.

As many municipal leaders and the Association of Municipalities of Ontario see Bill 53 as a template for a new Municipal Act, this issue is doubly important for UDI members and other businesses operating in the city and the province. Thus, we would request that before the province enacts both the City of Toronto Act and a new Municipal Act, the province should address and correct the current provincial-municipal fiscal imbalance.

Through Bill 53, the province intends to modernize the existing legislation to "recognize that Toronto is a mature government, capable of exercising its powers in a responsible and accountable fashion."

During a comprehensive legal review of the bill, we have noted and are concerned that the bill lacks measures to ensure accountability and transparency respecting new and increased taxes, fees and charges. Specifically, the industry is troubled that the bill is void of any appeal mechanisms, particularly with respect to those matters whereby city council, a committee of council or its local board can pass bylaws that have a financial impact on the public and stakeholders. Nowhere in various sections of the bill, as noted in the brief, do we see any requirements for council or a committee of council to inform the public of a proposed or increased tax, fee or charge, or how the public might appeal a decision of council. Section 261 does permit the minister to make regulations; however, at this time, we have not seen such regulations, and so there are a number of questions regarding the proposed regulations. Will the regulations stipulate public notification requirements for a proposed tax fee or charge? Will the regulations stipulate public notification of a council, committee or local board decision with respect to a proposed tax, fee or charge? And in the absence of the Ontario Municipal Board being permitted to hear disputes, will the legislation stipulate which body will hear the appeal, presuming the province and the city believe that Toronto residents, landowners and business owners are entitled to a fair and just process?

Of some consolation is the requirement within the bill for the city to appoint an Ombudsman. The Ombudsman would be empowered to investigate decisions, recommendations or omissions of the city, certain boards and those city-controlled corporations specified by council. For the committee's benefit, I will not read them entirely, but on pages 7 and 8 we have four specific recommendations that we believe should be considered and added as amendments to Bill 53 during the committee proceedings.

Municipalities and housing advocates have recently raised concerns regarding the shortage of rental housing in Ontario due to what are identified as "preventable losses." It has been suggested that municipalities should be given greater powers to prevent the conversion and demolition of Ontario's rental housing stock to ensure a sufficient overall supply of rental housing. This position

is founded on an inaccurate analysis of the rental market and reflects a lack of understanding of Ontario's rental supply, including the impacts of conversion of units from rental to ownership.

Contrary to the assertion that there is a current shortage of rental accommodation in the city, the rental vacancy rate has demonstrated a noticeable increase of late, from 0.9% in 2001 to 3.7% in 2005. In addition, the demand for rental accommodation as a percentage of overall housing demand has declined and continues to decline, as demonstrated by a decrease of some 48,000 renter households in Toronto between 1996 and 2001.

Furthermore, the economic life cycle of rental buildings is limited. A large percentage of the city's rental housing portfolio is approaching the 50-year-old mark. Investing the capital necessary to maintain aging rental stock is often not economically feasible or prudent. We would submit that the power to prohibit and regulate conversions and demolitions will create further barriers to the replacement of aging stock and the appropriate urban renewal and intensification taking place.

Regent Park is a prime example of the necessity of demolishing aging rental housing to make way for appropriate urban renewal and intensification. The plan to redevelop Regent Park, home to 7,500 people, calls for replacement of the existing 2,087 rent-geared-to-income units as well as the addition of 2,500 market units, including 500 affordable units. It is widely acknowledged that the wholesale demolition of these rental units was required due to a combination of deteriorating buildings, poorly planned public spaces and a lack of community facilities.

Like the Municipal Act, 2001, Bill 53 includes sections with respect to the role of council, the role of city staff and the role of the mayor as the head of council. Under Bill 53, council would have the power to establish its own governance structure.

Governance is a crucial issue to our members, and UDI would like to see that the powers and authority to be vested in council through this bill are exercised with prudence and accountability. UDI has long believed that the current structure of city council hinders councillors' ability to work effectively. The ward-based system discourages the balancing of city-wide and neighbourhood goals and objectives. As a result, debates are often unnecessarily protracted, parochial and divisive. It is our hope that council will conclude its analysis and decide shortly on its own governance reform.

Although we remain confident that council will decide shortly on how it intends to reform its governance model to increase the transparency, certainty and effectiveness of the decision-making process, UDI recommends that to encourage the city to undertake the needed reform in a timely manner, Bill 53 not receive royal assent until such time as council brings forward its own agenda for governance reform.

1800

The development and building industry believes it is important to provide the city of Toronto with the tools it needs to work effectively to build a healthy and prosper-

ous 21st-century city. We have concerns with certain policy directions of Bill 53, and those have been provided to you in our joint brief with the Ontario Home Builders' Association and GTHBA, which was previously filed.

We are also concerned that the broad new authorities and powers included in this bill may serve as a blueprint with respect to a new Municipal Act, and we would ask the province to exercise caution and patience before introducing an updated Municipal Act.

The Chair: You've cut it close: three minutes left, one minute for each party. It's a good thing you wrapped up. Mr. Duguid.

Mr. Duguid: Thank you, Mr. Rodgers, for joining us today. It's good to see you again. I won't call you Jim today; I'll call you Neil. That's a private—

Mr. Rodgers: Inside joke.

Mr. Duguid: Inside joke; it goes back a long way.

In your deputation, you talk about the province up-loading costs from the city. I think we've made significant progress so far in doing that with regard to public transit and public health. We've done it as well with land ambulance. There's still more work to be done—you're talking about social services costs, so a significant amount of money.

I guess my question would be, where would you expect the province to get those dollars? You're also talking about the need for all levels of government to operate within their existing current tax envelope.

The Chair: Mr. Duguid, you've used your whole minute. You'd better let him—the question is, where do you think those funds would come from?

Mr. Rodgers: There is no silver bullet out there. We recognize that the province is in its own fiscal challenges, and that's why we suggest that it be, in part, a phased-in approach. I don't think we can expect you to turn the switch on instantaneously, but hopefully the efforts being made by the Premier and the Legislature to support the federal/provincial fiscal imbalance will in turn trickle down and deal with that. We are not asking for it to happen overnight, but some positive measures have to be started in a phased approach.

The Chair: Mr. Hardeman.

Mr. Hardeman: Thank you very much for the presentation, Mr. Rodgers. I think it's a well-thought-out plan. In fact, I agree with most of what you have in here. Everyone who made presentations that spoke to the governance of the city of Toronto said that needs to be done prior to the implementation of the new powers for the city. I would liken it to the fact that we're building a new bus and it makes good sense to put the driver in before you put the bus in gear. It seems to me that there's nothing in this that would do that, because the bill actually talks about giving the city that power and the province will at some point decide, "If you do nothing, then we will do it for you; we can do it by regulation, but we're not going to do it." I just wanted to point that out again. I think it's so important that we have the governance decided and implemented prior to implementation of this bill.

Mr. Rodgers: The government has thought the governance scenario out, but, to use your analogy, the bus will have left the parking lot. You, as the Legislature, have the ultimate authority in ensuring that the bill—you're going through the appropriate processes, but ultimately, royal assent of the bill perhaps should wait. I think we're all hoping that council will act judiciously and prudently and bring forward a recommendation. I think the last thing we want to see is the province invoking the powers that are contained in the bill. I don't think that is in anybody's best interests.

The Chair: Mr. Prue.

Mr. Prue: The line here on governance is, "The ward-based system discourages the balancing of city-wide and neighbourhood goals and objectives." The only alternative to a ward-based system that I know of is an at-large system, be it across the entire city or in a broad geographical area. Is that what you're proposing?

Mr. Rodgers: It's one of, I guess, a number of options that are available out there. Perhaps the comment should be tempered: Perhaps some wards do not portray the best decision-making processes and in some cases are, quite frankly, dysfunctional. Throwing the baby out with the bathwater may be a little too difficult here, but I think what we're trying to say is that in some cases it does not work.

Mr. Prue: Just to follow that, it then becomes prohibitively expensive for someone to seek a council seat if it's across the whole of the city. It cost the mayor in excess of \$1 million, maybe \$1.5 million; it would cost that for a council seat. Even if you squeezed it down and said Scarborough is an area, you're looking at a quarter of a million.

Mr. Rodgers: I didn't know that the cost of a councillor seeking election was the real reason we should be changing our governance.

Mr. Prue: It's just one.

Mr. Rodgers: I hope it's not the question, though.

The Chair: I'm sorry, but we're going to have to call this conversation to an end. Thank you for being here today, Mr. Rodgers.

REAL PROPERTY ASSOCIATION OF CANADA

The Chair: Last but not least, the Real Property Association of Canada is our final delegation for today. Mr. Conway?

Mr. Michael Brooks: Actually, my name is Michael Brooks. I'm the executive director of the Real Property Association of Canada. On my left is Mr. Conway. He's our director of government relations.

The Chair: Great. You know that you have 15 minutes.

Mr. Brooks: I don't think we're going to use 10 of it—that's probably good news for people here—unless we have a good discussion after.

Thank you for letting us speak to this issue. REALpac was known as CIPREC until March of this year. Our group represents public and institutional real estate from

coast to coast: all the banks, all the TSX-listed companies, all the REITs and most of the large pension funds that hold investment real estate. So our perspective is from those owners who have immovable, in the French sense of the word, real estate; they can't pick up buildings from downtown Toronto and move them to Mississauga because the tax rates are lower.

Certainly we have been involved as an organization, along with our colleagues who have previously spoken, with city of Toronto issues for several years. We've been involved in assessment review—current value assessment—when that was a hot topic. We do an annual national property tax study, where we compare property tax rates, commercial and residential, coast to coast. Our studies show Toronto, at five to one, the highest in Canada—the highest in North America—followed closely by Ottawa and Vancouver, respectively. I think we've been on the record, given a choice between uploading services or downloading cash or taxing authority from the province, as being more in favour of uploading services and perhaps even taking a large budget item like the TTC and having shared ownership of it.

Our perspective on property tax—given that some of you are from 905 and some of you are from Toronto, you're probably thinking, "Why do we care, because we're from everywhere and if we move out of the downtown, we'll move to Brampton and pay property taxes there?" So you're probably thinking, "why do we care?" One of the main reasons is that it's a little contradictory for us to have the highest property tax rates in Canada while advocating a hub-and-spoke rail system and treating downtown Toronto as the centre for mass transit. As a previous speaker said, one new job in Brampton is probably a car or 0.9 of a car; one new job downtown is one tenth of a car, if not one twentieth of a car. It just makes more sense to encourage intensification downtown. So our perspective is that of policies working at cross-purposes.

As far as the City of Toronto Act is concerned, I guess our greatest fear, if I can use a Donald Rumsfeld term, is the unknown unknowns. One of the concerns about the unknown unknowns was, what kinds of taxing powers could be buried in this City of Toronto Act that no one is anticipating, which could come back and be problematic or work at cross-purposes with provincial interests?

The schedule A chart that accompanies our letter and that my colleague Mr. Conway has passed around was generated by the legal opinion that the previous speaker mentioned that we obtained from the former city solicitor of the city of Toronto. It's based on some previous experiences: the commercial concentration tax we saw in Ontario maybe a decade ago. Maybe it was during the Bob Rae years; I'm not totally 100% on that.

1810

Mr. Prue: The Peterson years.

Mr. Brooks: The Peterson years; I'm sorry. The Peterson years lasted about 18 months, as I recall, or two years before it was rescinded.

We've seen parking space taxes in Vancouver, and they created quite a backlash there. We understand they

may be enabled in the province of Quebec, but of course anybody who owns a retail facility is horrified, as are their small tenants.

Land transfer taxes: I don't think we've seen a local municipality with the power to levy land transfer taxes or mortgage registration fees anywhere in Canada.

To go back to Donald Rumsfeld, our fear of the unknown is significant with this act. We don't know what tax we might be fighting against, but it could be any one of those and many others.

I suppose that we also have a concern that's underlying all of this with the city of Toronto's ability to manage its own finances, hence our previous position of preferring an uploading of costs to the province versus a downloading of cash to the city.

Another Rumsfeldian fear we might have is that once this act is passed and some new taxes appear at the city level, they still don't have enough money to go around.

It's certainly, from our members' perspective, likely to increase the cost of doing business in the city of Toronto. We worry that it will increase or maintain the exodus of jobs to 905. As most of you know, we've had one new building downtown in 15 years, the Maritime Life Tower on Queen. There have been some smaller ones. There are three on the drawing board now, but as my previous colleagues have mentioned, there's far more development having happened in Markham and York region, Mississauga and elsewhere.

Certainly the city of Toronto has started to address the downtown property tax problem. We were very pleased and very encouraged by council's decision to try to get the commercial-to-residential property tax rate from five-to-one down to 2.5-to-one over a 15-year period. Of course we would have preferred to see that happen in five years, but we understand that they're under some pressure, and even a small win is gratefully appreciated by our members.

In conclusion, there are perhaps two thoughts that I'd like to leave with this committee for it to consider. One, is it possible for you to draw a smaller circle around the range of expected taxation powers that are embedded or implied by the bill to eliminate those that might impact commercial property owners, given the five-to-one existing property tax ratio? Or secondly, could you reserve unto yourself either an approval power or a power of rescission such that if any new city of Toronto tax is seen to adversely impact something which is in the provincial interest, you're able, on notice, to have it rescinded?

I think we'll probably leave you with those thoughts for now. Madam Chair, those are our comments.

The Chair: You've left two minutes for each party for questions. We'll begin with Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. The issue of the taxation has been expressed by a lot of people: not so much the taxing ability that's in there, which is only three different taxes, but as you mentioned, it's the unknown ones. The land transfer tax has been mentioned by quite a number of groups.

I guess to kind of alleviate the last concern you mentioned, in fact the bill does include the ability for the

minister, by regulation, to prohibit the city from increasing certain taxes. Of course, that's a challenge, because obviously the bill is intended to give the city power, and then at the same time we're going to say, "But if you're taking power that we don't think you should take, we are going to pass a regulation." The chances of the minister ever using that, in my mind, would be minimal, because once it has been applied, why would the minister say, "No, we don't think you should do that. Just come and get the money from us instead of charging that tax"? That's not going to happen. So I would just point out that I think it's a concern that those taxes would be implied.

You mentioned that we needed a smaller circle around—knowing that it's the unknown, how would you suggest that the bill be changed to limit the number of taxes, as opposed to the way it is now? Since we don't know what they are, which ones would you suggest we include?

Mr. Brooks: I feel like changing my name to Donald to answer that question.

Certainly, from my perspective, anything that might exacerbate an existing trouble area, I would perhaps reverse the onus and give the province the ability to approve it in advance as opposed to rescind it after the fact. Commercial property is one area where we know we have a problem. With user fees and that ilk, I don't particularly have any difficulty at all. I can't speak to any other areas that might also be in the provincial interest to protect at this time.

The Chair: Thank you. Mr. Prue.

Mr. Prue: I would be in agreement with you if one were to say that commercial-industrial and multi-residential people are all overtaxed vis-à-vis homeowners. I think you've tried to say that as well.

Many of the groups are advocating uploading the download as a way of getting rid of that portion that's put on the property tax, particularly in education, welfare and assisted housing. You haven't really talked much about that and I just wondered, does your group think that is a way to take the burden off commercial properties?

Mr. Brooks: I think taking the cost side pressure off the city of Toronto is a potential solution. It doesn't seem like that's the direction this act has taken things, so we haven't looked into it in more detail. About two or three years ago we would have advocated, as I've mentioned, perhaps making the TTC a shared responsibility, sharing the budget responsibility for that as a major cost item in the city of Toronto. There might have been a few other small things—land ambulance and some welfare going back.

Mr. Prue: It was a cost share, 75-25, with the province until 1996 or 1997, something like that. So you think that that should go back?

Mr. Brooks: I've not looked at that recently. Two or three years ago we had this position.

The Chair: Thank you. Mr. Duguid.

Mr. Duguid: Thank you for taking the time to share your thoughts with us today.

You brought up an interesting phrase, "fear of the unknown." I think that's something that permeates through

a number of the deputations that we've heard today and it's something I'd like to make a short comment on. You're right that there are some unknown factors here. We don't know exactly how this Toronto council and future Toronto councils will use this additional authority. It's a question, though, of confidence in the people of Toronto that they will hold their government to account. The McGuinty government is very confident that the people of Toronto, as a mature community, will hold their government to account for the decisions they make. That is why we're confident that providing some permissive taxing authority to allow the city of Toronto to be competitive with other international jurisdictions their size is something that, in the end, will work out in the best interests of not only Toronto residents but the Toronto business community as well, because it will help us build a stronger Toronto and a stronger economy.

My question to you is more along the downloading side. You indicated that you would like to see some upload. We have uploaded a number of things already in terms of increasing provincial contributions to public

transit, both capital and operating, land ambulance and public health as well. We are looking at others into the future, and I think we'd like to do more, but it comes down to affordability. Whom do you want us to tax further to be able to afford this? Or would you want us to cut in terms of provincial services to be able to afford further uploading?

Mr. Brooks: I'd probably prefer the third alternative initially, which is to spend less at the city level, and then look at those other two. I'm concerned that we haven't looked enough at controlling spending at the city level. I don't know that there are huge savings there. I fear that there are some savings that perhaps should be explored first.

The Chair: Thank you very much for being here today.

Committee, this draws to a close our participation in hearings today. This committee now stands adjourned until 4 p.m. on Wednesday, May 3.

The committee adjourned at 1820.

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Standing committee on general government

Stronger City of Toronto
for a Stronger Ontario Act, 2006

Comité permanent des affaires gouvernementales

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STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 3 May 2006

Mercredi 3 mai 2006

*The committee met at 1602 in room 151.*STRONGER CITY OF TORONTO
FOR A STRONGER ONTARIO ACT, 2006LOI DE 2006 CRÉANT
UN TORONTO PLUS FORT
POUR UN ONTARIO PLUS FORT

Consideration of Bill 53, An Act to revise the City of Toronto Acts, 1997 (Nos. 1 and 2), to amend certain public Acts in relation to municipal powers and to repeal certain private Acts relating to the City of Toronto /
Projet de loi 53, Loi révisant les lois de 1997 Nos 1 et 2 sur la cité de Toronto, modifiant certaines lois d'intérêt public en ce qui concerne les pouvoirs municipaux et abrogeant certaines lois d'intérêt privé se rapportant à la cité de Toronto.

The Chair (Mrs. Linda Jeffrey): Good afternoon. The standing committee on general government is called to order. We're here today to continue consideration of Bill 53, the Stronger City of Toronto for a Stronger Ontario Act, 2006.

I'd like to welcome all our witnesses and tell them they have 15 minutes to make their presentation.

RYERSON UNIVERSITY

The Chair: Our first presentation today is from Ryerson University, Mr. Levy, president. Come forward.

Dr. Sheldon Levy: I've got copies of my presentation, which I can share with members.

The Chair: Okay, we'll take them. Welcome. If you could tell Hansard who you are and the organization you represent; you'll have 15 minutes. If you leave some time at the end, we'll be able to ask questions about your presentation.

Dr. Levy: Thank you very much. My name is Sheldon Levy. I'm the president of Ryerson University.

Good afternoon. Thank you for having me. It is very encouraging to be here at a time when the context for public discussion and progress is clearly so healthy and strong. This is a great example of the legislative process at work, and the committee is to be commended.

The province and the city are making history with this bill, led by Premier Dalton McGuinty, Minister John Gerretsen and Mayor David Miller, and it is especially

impressive that the broader community was given so much opportunity for input.

I want to begin my remarks by asking you to take a walk with me. Imagine walking on a street near a city campus where you saw university buildings facing inward, with brick walls and no windows; storefronts nearby that were dollar stores or sex shops; buildings in disrepair or vacant, and a general air of neglect. Now imagine if you went back 10 or 12 years after that and saw university buildings facing out, with windows casting light on the street; stores, cafés, bookstores and art galleries; renovated buildings; new homes; and a positive sense of renewal.

What I have described is a true story but it didn't take place in Toronto. It is about the University of Pennsylvania. In the mid-1990s, things were pretty terrible in that part of Philadelphia. The university was excellent but the neighbourhood was in serious decline. From that very low point, the university became a city builder and over a decade it really turned things around. Members, I like to tell this story because it shows what is possible when cities and universities agree to work together on a shared agenda.

I was going to start this presentation by saying, "I am here on behalf of Ryerson University," but that's only part of the story. Instead, I decided to pose a question, and it's this: If you ask people, "Where's downtown Toronto?" many of them would say, "Yonge Street" or "The Eaton Centre." It's not the only answer, but a lot of people think of the city that way.

I make this point because it turns out that this fall, when we open our business building on Bay, Yonge Street will go right through my campus. The thing about Ryerson is that unlike most other universities, you can't draw a border around it. What happens to the city happens to Ryerson and vice versa. We have a shared stake in success. So this discussion we are entering is critically important to us.

The challenge for Ryerson is that it has only 60% of the space it should have for a university its size, according to accepted data measured by the Council of Ontario Universities. Our most pressing needs are more academic and research space, 2,000 more student residence beds, a new and expanded library, and more quality study space. Our students are underserved in athletic and recreation facilities, and they tell me our campus should be more pedestrian-friendly. We need more green spaces and space for students to gather and interact.

On March 8, in a speech to the Canadian Club, I announced that Ryerson is moving forward with a campus master plan. It is a plan that recognizes two facts: There is no campus boundary in the traditional sense, and there is no vacant campus land stretching out in any direction. So in reality our campus master plan has to be a campus and city plan, and we are looking to the City of Toronto Act to help make this possible.

I know there are many provisions in the proposed act, but today I want to focus on the four powers most significant for us.

First, we need an approach to land use planning that will make creative development possible. Since green roofs are mentioned especially, I am proud to say that the city commissioned the green roofs research from Ryerson.

Our campus has other challenges. Given our neighbourhood density, we have to approach our space shortage in innovative ways. In this, we have the benefit of our city councillor Kyle Rae. His expertise is already making a major contribution.

We are open to new concepts of quality university space. We are open to partnerships to build or convert existing structures to unique residences that serve students and look great. We are actively seeking options for library and learning space that might also be shared in useful ways with the community.

It's my opinion that Ryerson needs a front door, perhaps on Yonge Street. Students have asked us to close our section of Gould to traffic. Our vision includes partners who look at space near our campus as opportunities for coffee shops, stores and services that are clean, bright, imaginative and attractive.

When opportunities arise, we hope to partner with the city on athletic and recreation space.

In summary on this point, our plan is to work with the city to make our historic heritage part of Toronto a magnet for quality redevelopment. We are looking to the City of Toronto Act to enable that direction rather than over-regulate to prevent it.

Second, we are very pleased to see reference to appearance and design features. I would like to interpret this very clearly as a commitment to high-quality design and excellence in architecture. I will give a particular example.

This past year, Ryerson received a remarkable legacy donation: the Black Star historical black and white photography collection of 300,000 photographs. It has been called the most significant cultural contribution ever made to a Canadian university. Some of these magnificent images are on display during this month's Toronto photography festival at the Allen Lambert Galleria in BCE Place, and I encourage you to go see them.

We have made it a Ryerson priority to build a gallery and research centre to house this one-of-a-kind gift. To tell the truth, I have already rejected drawings that I did not think lived up to what we have here. I do not think we should settle for less.

1610

Ryerson has the benefit of a university community of professionals from the disciplines of architecture, design, and urban and regional planning, all of which are taught at Ryerson. I rely on my colleagues not only for guidance about the university, but also for their advice about strong design in our city. We will seek ways to bring into our discussion the best and brightest members of the design and planning communities of Toronto and Canada. We are asking the City of Toronto Act to help make design statements of enduring quality and originality.

Third, we're looking for the financial tools we will need, in particular the provisions included in community improvement plans and tax increment financing. This kind of help will allow us to consider innovative opportunities to acquire properties that will use our resources responsibly and serve Ryerson's long-term space needs. It will make it possible for us to work with groups like our local business improvement associations to develop community-based strategies for respectful and positive change. It will give us a basis for initiating and responding to options and potential partners to identify and move forward on building projects. We will be able to make the most of our opportunities knowing we have support of enlightened fiscal tools.

Fourth, and finally, we welcome the prospect of increased authority and accountability for decisions, and we hope the act will deliver the clarity and nimbleness needed for progress. This will do more than anything to empower the culture of change. I know from experience that this is very hard to implement, and it takes time. At Ryerson, we completed a decentralization review this year, because my own inclination and experience prompt me, as president, to give decision-making to the local level at the university and to make the deans and directors accountable for their own strategies and plans. But, just like the city of Toronto, the sum of all decisions has to make sense for the university or the city. It has to make both better. It's tough because it means giving up a measure of control and sometimes even going against your instincts in terms of what is most efficient or is the best use of resources. But what the City of Toronto Act has to do is to make a strong statement of confidence in the ability of the city to pilot its own course, recognizing the partnerships within the province and all the public and private entities, like Ryerson University, whose success is tied to the city's success.

We make great things happen in education, culture, research and neighbourhood renewal, but we need the provisions that the City of Toronto Act will provide: the ability to make development and design decisions, to have the financial tools necessary to support innovation and a clear path to decision-makers. We are prepared—no, make that eager—to move forward on forging our shared destiny with your help.

Thank you, and I'm pleased to answer any questions.

The Chair: You've left about a minute for each party to ask questions, beginning with Mr. Hardeman.

Mr. Ernie Hardeman (Oxford): Thank you very much for the presentation. It's a very well-thought-out presentation. I'm particularly pleased with the fact that it deals mostly with working together with the city for the common good.

We've had some discussion about the planning aspect of Bill 53, which of course is the precursor to Bill 51, the actual bill that deals with planning throughout the province. The selection of design or the ability to control the design of buildings and the material of buildings has been an issue that's been discussed by some other presenters who oppose that part of the bill, but they looked at it differently than you did. You looked at it as your having the local decision-making at Ryerson as to how you would build the university campus within the city environment. The others looked at it and said, "The city now has the right to tell us how to build things." Looking at the other presenters' presentations, I would have to take from your presentation that as you've turned down the drawings so far, when you've found one you like, the city could say, "But that's not what we want." So it isn't giving the control for those designs to the people who are developing it; it's giving it to the city fathers, shall we say. Why is it you believe that that's not the case in your case?

Dr. Levy: Well, the point I was making could be put as follows. I think someone has to take care of the whole, so I believe that there is good sense in delegating within a framework and giving the authority to the people closest to the action to make the decisions that they think best bring together the fiscal resources they have and the aspirations they have. But I think that if you allow that to happen, everyone has such an independent vision for the city that you lose big-time. So I think there has to be some overarching—I don't want to use the word "control," but quality sense that all of us are contributing in one way or another to the building of a city and that we have to see ourselves with a greater responsibility than simply meeting our own ends.

The Chair: Mr. Tabuns?

Mr. Peter Tabuns (Toronto–Danforth): Thank you, President Levy, for coming and making this presentation today. I'd like to follow on my colleague's question. It's quite correct: We've had voices raised against giving the city these powers around design. What would you see as the negatives if in fact the city wasn't given these powers to have greater authority when it comes to setting design criteria for new development?

Dr. Levy: What do I see as the negatives associated with it? If I could, I'll try to answer that question both ways. What I find as problematic is not when the city has the authority; it is when the authority is vested in local groups that are only interested in the issue of their local community, with no vision of what the city should be overall. So my view isn't allowing microdecisions to be made by microgroups that might not want the shadow on their property and stopping a major, wonderful city development. Mine is, you've got to have something like an executive committee with some sort of authority that has an overall vision for the city.

I would be delighted if there was someone who had an overview of a wonderful vision for the city to essentially—I call it "edit" my plans, whom I have to respond to, as opposed to my plans being subject to the neighbour three doors down who happens to have a case close to a councillor that in fact trumps my plan because they become the only voice that is being heard. I would like accountability to authority for a vision for a great city of Toronto, not to every single person in the city.

The Chair: Mr. Sergio?

Mr. Mario Sergio (York West): Mr. Levy, thanks for your presentation. You mentioned four points in the last part of your presentation. On your last point, with respect to sending a message to the city with a strong statement, it has taken some time for the bill to come so far, and it has been well thought out. We have had quite a few consultations on it. Do you believe that the bill presents the city of Toronto with exactly all the tools that the city should need to deliver their strong statement?

Dr. Levy: I took part in this in the early stages, when I was on the board of trade, so this is not all new to me. I think it is a huge move forward for the city of Toronto. Is it perfect? I don't think it's perfect, but do I think it's the right move to improve where we are? In many ways. The financial tools that this bill provides the city of Toronto—if you were in the United States, if you were in Chicago, under which we were, these tools were fundamental for that city to develop and for its institutions to develop. So I think this is a very big step forward and a positive one, and I applaud the bill.

The Chair: Thank you, Mr. Levy. We appreciate your being here and your thoughtful comments.

Dr. Levy: Thank you very, very much.

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CANADIAN INSTITUTE OF MORTGAGE BROKERS AND LENDERS

The Chair: Our next delegation is the Canadian Institute of Mortgage Brokers and Lenders. Welcome. If you could identify yourself and the organization you speak for. After you've done that, you will have 15 minutes. If you leave some time, we'll be able to ask questions about your delegation.

Mr. Jim Murphy: Thank you very much.

The Chair: Do you have a handout today?

Mr. Murphy: I do. It should be in a file folder like this, gold and black.

Good afternoon, Madam Chair and members of the committee. My name is Jim Murphy. I am the senior director of government relations and communications for the 8,500-member Canadian Institute of Mortgage Brokers and Lenders or CIMBL.

I want to talk about three things today:

- (1) Provide you with a brief background on the mortgage industry in Ontario and our organization, CIMBL.
- (2) Recommend an exemption from municipal licensing provisions for professions like mortgage brokers and

agents who are already regulated in Ontario through other regulatory regimes.

(3) Express serious concern with the possible introduction by the city of Toronto of a new property-based land transfer tax.

CIMBL represents all facets of the mortgage industry: mortgage lenders, including all of the major banks that are members, credit unions, mortgage brokers, mortgage agents and mortgage insurers. In 11 short years, CIMBL has grown from 300 members to over 8,500 members across the country. We have members in every province, with nearly 5,000 here in Ontario alone. This rapid growth speaks to the current health of the housing market in Ontario.

Recent research that CIMBL has undertaken, copies of which you have in your packages, shows that there is in excess of \$300 billion in outstanding mortgage credit in Ontario. This total is growing by 10% each and every year.

Issues that we are currently involved with include the new Mortgage Brokerages, Lenders and Administrators Act, Bill 65, which was recently introduced by the Minister of Finance in February. Bill 65 will replace the current outdated regulatory framework for mortgage professionals in Ontario. I should note that other provinces are also updating legislation which affects our members, including Alberta and Saskatchewan.

In Ontario, our industry is regulated by the Financial Services Commission of Ontario; FSCO is the acronym. All individuals undertaking mortgage activity in Ontario who do not work directly for a deposit-taking federally incorporated institution must be registered with FSCO in order to practise. Under Bill 65, the superintendent of FSCO will be granted new powers to regulate our industry, including suspension of licences.

Bill 65 will provide for a tiered registration of mortgage professionals in Ontario, with new education and insurance requirements for those who practise.

As we noted in a letter we forwarded to the Minister of Municipal Affairs and Housing dated January 19 earlier this year, section 8 of Bill 53, which is before you today, provides for the city broad licensing powers. Paragraph 5 of subsection 8(2) allows the city to license for the "economic, social and environmental well-being of the city," while paragraph 8 includes "protection of persons and property, including consumer protection."

Sections 11 and 119 of Bill 53 allow the province to make a regulation to exempt provincial or federally regulated professions such as ours. Further, regulation 243/02 of the Municipal Act envisages a similar power.

I would ask today and CIMBL would recommend that the province provide a licensing exemption under either Bill 53 or other legislation, such as the Municipal Act, for professions such as mortgage brokers and agents who are already regulated in Ontario and have a separate regulatory regime. I should note that we've had discussions with the ministry in this regard and they are aware of our concerns, and I know that we're not alone. There are other professions, including real estate and chartered accountants, who express the same concern.

Let me conclude by talking about land transfer tax. Today in Ontario the provincial government generates nearly \$1 billion from the provincial land transfer tax, or LTT. This tax has been a growing component of provincial revenues. Bill 53, while prohibiting other forms of taxation, including personal and business taxation, does not explicitly prohibit the city of Toronto from introducing a municipal land transfer tax.

According to the Toronto Real Estate Board, which has already spoken before the committee, the average land transfer tax currently paid by Toronto homeowners is in excess of \$3,000, and I think they estimate close to \$4,000 for every real estate transaction. The legislation before you today would allow the city to increase this total. CIMBL opposes such a new tax for the following reasons:

The city and province have stated that they want to move away from property-based taxes as a sole revenue source, yet one of the new taxes seemingly offered the city is for a new property-based tax in the form of a municipal land transfer tax.

An additional land transfer tax would make owning a home expensive in the city relative to other parts of the greater Toronto area and Ontario whose municipalities will not have the same powers, thereby acting as a serious disincentive to the provincially mandated plan of intensification and promoting growth within the city of Toronto.

A municipal land transfer tax would also impact affordability directly by increasing the cost of all housing, particularly for first-time buyers. Finally, it is worth noting that both Alberta and Saskatchewan do not even have a land transfer tax, yet residents in Toronto may be impacted by two separate ones.

CIMBL recommends that sections 256 and 262 of Bill 53 be amended to prohibit the city from levying a municipal land transfer tax, or as a minimum, at least that there not be two land transfer taxes in the city of Toronto.

I'd like to thank you for your time and would be pleased to answer any questions you may have.

The Chair: Thank you very much. You've left about two and a half minutes for each party, beginning with Mr. Tabuns.

Mr. Tabuns: Thank you, sir, for coming in today. On the question of this land transfer tax, could you talk to us a bit about what the threshold would be for discouraging people from making purchases? I'd like to preface it by saying that a friend of mine recently sold a house in East York. East York is a very nice place, but it's not really fancy; it's plain-folks kind of living. People bid up on her house about \$30,000 over what she was asking. So it said to me that this is a market where you can sell and there's a fair amount of room to increase the price. You've spoken against the land transfer tax, or a land transfer tax. I don't know if the city would actually implement one, but it might. At what point do you say a land transfer tax is going to discourage sales?

Mr. Murphy: Thank you. According to TREB, the current land transfer tax in the city of Toronto is about

\$4,000, which is a lot of money. I think it's equal to or even higher than the current municipal development charges in the city, for example. I don't think it's something homeowners are aware of when they're purchasing a home. It's part of the closing costs. As you know, there's a sliding scale in terms of how the provincial land transfer tax is determined. So once you hit a certain threshold, I believe \$150,000, the percentage increases of the actual sale price.

I think, with housing prices rising in the city and across the GTA, that you're almost at that threshold now. Four thousand dollars is not a small amount of money for people to pay. It's certainly more than their legal costs, it's more than they would pay a mortgage professional to do their mortgage—all those transactions that are included in the final closing costs.

Our concern is that not only is there a provincial land transfer tax but this legislation foresees, or does not prohibit, the city from instituting its own land transfer tax, where you have two. There are some provinces in western Canada that don't have any, and we may end up with two. So there should at least be some discussion between the province and the city about rules around criteria around how that would be developed so it's not duplicated, so that people don't end up paying twice and having to pay more.

The Chair: Mr. Ramal, did you have a question?

Mr. Khalil Ramal (London—Fanshawe): Thank you for your presentation. I was listening to you about your concern. In your opinion, how can we alleviate those concerns and come up with a strong bill that can serve the public, the cities and the province?

Mr. Murphy: The first issue is licensing. I think our concern is not one that we're expressing by ourselves. There are a number of professions who would like exemptions from the municipal-provincial licensing regime, and the legislation foresees the ability to provide that. Whether it's ourselves or chartered accountants or real estate brokers, anybody else who is already governed by provincial statute and already has a regulatory regime and a licensing regime that they have to meet, should not have to worry about that being duplicated by a municipality. Our members all pay, fiscal, a sum of \$275 a year. They have to meet ethics requirements, education requirements, all sorts of things, so there are already rules and regulations in place.

On the land transfer tax, I think the province should seriously look at, as a minimum, putting some criteria around so that the city doesn't come in—it may not come in right away, but it may at some point say it needs revenue and come in with a tax that would be on top of the existing provincial tax that would just make affordability very difficult and potentially drive, particularly first-time buyers—you have a strong condominium market in the city of Toronto. A lot of those people are first-time buyers. You just have to look around at all the construction cranes. They're the ones who are going to be hit with potentially two land transfer taxes. Our position would be, don't allow the city to do it at all. But as a

minimum, at least put some criteria around it so that it's mitigated.

The Chair: Mr. Hardeman.

Mr. Hardeman: Thank you very much, Mr. Murphy, for the presentation. On the land transfer tax, we've heard from the real estate folks and others the problem with that. Personally, I believe that the land transfer tax is charged by the province for services rendered, which is transferring title to property. The city is not in that business. I don't see that the city should be getting paid for something that another level of government is doing. Both the mayor and the minister seemed to think that that likely wasn't going to happen anyway. I would hope that the government changes the bill to make sure that it doesn't happen from the word go.

I'm more interested in the issue of licensing. How would you frame changes in the bill to exempt people who are already licensed by the province not being required to license again for the city?

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Mr. Murphy: Just allow me one comment on the land transfer tax. I would argue that even the province doesn't do that, because the previous government privatized the land registry system under Teranet, so it doesn't even need money to provide for that system. It's a private entity that's doing that.

We would just be looking for a regulation that would say to the city that they cannot license professions that already have a licensing regime, whether provincially or federally mandated, that have ethics, education and all these sorts of things that are already in place by provincial statute, so that it's not duplicated. We have had some discussions with the ministry. I think they're certainly listening to that, and we're optimistic that there may be such a regulation.

The Chair: Thank you very much for being here today. We appreciate your attendance.

CANADIAN PROPERTY TAX ASSOCIATION

The Chair: Our next delegation is the Canadian Property Tax Association.

Mr. Jeff Cowan: Good afternoon, Madam Chair and members of the committee. My name is Jeff Cowan. I am the past president of the Canadian Property Tax Association. With me is David Fleet, another past president of the association; Maria Colavecchio, who is the Ontario tax policy committee chair; and Gerry Turrin, who is a member of the CPTA committee as well. You'll see from our materials, which I believe have been handed out, the nature of the organization. It's non-profit and we all have experience in dealing with municipal taxation matters. Mr. Fleet is going to highlight the submissions to the committee.

Mr. David Fleet: I'm glad to be back. I'm going to summarize the CPTA's submissions in four categories: tax burden, new property taxes, clawbacks, and fees and charges.

The city of Toronto staff reports show that there has been some 100,000 jobs lost in the city of Toronto in the last 15 years. It's quite clear that excessive taxation of the multi-residential, commercial and industrial property classes has contributed to the job losses and to urban sprawl. The current city of Toronto policy—right now—is to continue to increase the commercial and industrial property tax burden. The CPTA is supportive of smarter and better economic development and urges that Bill 53 prevent any increase in the traditional tax burden for those classes until such time as the provincially established tax ratios are achieved. In addition, the business education tax, and not simply the municipal taxes, should be the subject of a tax ratio. In other words, the province should be applying the same concept to itself that it purports to be asserting for the city.

Under the category of new property taxes, section 262 of Bill 53 should be amended to prohibit new forms of property taxes for those three property classes—multi-residential, commercial and industrial—until such time as the provincially established tax ratios are achieved.

With a more narrow amendment, we would suggest that subsections 25(2) and (3) be amended. In their current form, they suggest that the provincial regulatory power—a kind of interim control power—would be limited and would apply to sections 7, 8 and 262. We're suggesting that it ought only be applied to sections 7 and 8 and not to section 262.

Lastly in this category, any new property tax under section 262 should be subject to a mandatory requirement of the right of appeal, annually and without a fee, to an independent, expert tribunal for a full, fair and timely hearing. Any tax rebate that would result should be with interest. A perfectly good example of this is the old commercial concentration tax, which, by the way, I voted for when I was here. It was in place in from 1990 to 1993. It was the tax nobody loved. In fact, it was the only tax, to my knowledge, that the NDP government, in the midst of high deficits, said was a terrible tax, and they ended it. That had a full set of appeal rights, so even a bad tax has appeal rights. Why wouldn't that be a mandatory obligation under Bill 53?

The next category of clawbacks: The CPTA's view, and we would hope the view of all political parties, is that taxes should be transparent and conceptually easy to understand. Certainly that was part of the original rationale for tax reform in 1998 and subsequent years. Clawbacks are the exact opposite of that. Taxes should also be fair and equitable, yet city staff has reported that the 2004 effective tax rates for Toronto's commercial property ran from under 1% to over 7%. That's an incredible range of taxes for the same property class, so it's obviously grossly inequitable. In fact, I was looking at a tax bill this morning from Burlington. They don't even call it a regular tax rate; they call it a notional tax rate, because the effective tax rate is what you actually pay on. After capping and clawback, it's different than what gets voted on. It's the real taxes that matter.

Toronto's commercial clawback rate this year is about 96%. Current Toronto policy effectively means that the

inequities and the lack of transparency are going to be permanent. We would urge that Bill 53 mandate a swift elimination of those clawbacks. We would also suggest that Toronto be required to make public on its website, for free, the assessments and actual taxes levied. It's what the city of Hamilton does now. At least with that measure, taxpayers could understand how they and others are really being treated.

To give you an idea of how clawbacks work, I'll give you an example but relate it as if it applied to income tax. Imagine that you and your neighbour last year earned the same amount of money. You'd pay the same income tax. This year, your neighbour has done really well and his income has doubled, but his income tax is limited. He can't pay more than 5% more. Your income, unfortunately, has fallen in half, but you're in a clawback, and if it's a 100% clawback, you'll pay the same taxes as you did last year. In the income tax scheme, that would be bizarre and nobody would suggest it. Why in the world would it be appropriate for property tax? We suggest that it's not.

In the category of fees and charges, the CPTA noted that the provision under section 392 of the Municipal Act, 2001 is missing from Bill 53. We think that Toronto should be obliged to publicly list which services and activities are the subject of fees and charges. That's the current obligation. We see no advantage to having less transparency with Bill 53.

Secondly, there should be a requirement of no double taxation, and that should be a guarantee in Bill 53, so that there are no fees and charges imposed by the city for costs that are now met by property taxes without a consequential lowering of the property taxes levied in the annual city budget. That way, there would be no use of fees and charges as a form of double taxation.

Those would be our submissions for today. We would be pleased to answer any questions you might have.

The Chair: Thank you. You've left about two minutes for each party to ask questions, beginning with Mr. Duguid.

Mr. Brad Duguid (Scarborough Centre): I want to thank you all for coming here and for a very thorough and well-thought-out deputation. There are a number of issues that you've raised here, some of which may be a little easier for us to look at in terms of amendments and others that may run counter to the approach we're taking with regard to permissiveness with the city. But I appreciate the input nonetheless.

I listened carefully to your comments about the caps on commercial/industrial, and I was almost left with the impression from what you said that these caps were somehow being lifted through this legislation. In fact, my understanding is that those caps remain. That was a decision we made. We could have—and the city wanted us to—removed those limitations and the access that they'd have to the commercial/industrial tax base. Very much on some of the representation we received from yourself and the business community, we chose otherwise. Maybe you might want to comment on that just to ensure—

Mr. Cowan: The answer simply is, we don't want Bill 53 used as an indirect means to avoid the caps on those taxes, to keep the existing property taxes but to add to them by indirect means by additional taxes under 262 or in fees and charges, which are in effect additional property taxes. So we want the legislation to reflect that balance, as it were, and the policy that's there, but not to achieve indirectly through new powers what the province has already said quite clearly in the Municipal Act as the hard cap on increases.

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Mr. Fleet: In fact, the hard cap really doesn't exist. It's kind of a soft cap, and it gets pierced annually. That's not fun for the people who bear that, but the clawbacks are even worse. There are ways to deal with the capping mechanism without having clawbacks that are running close to 100%, because then you don't have equity.

The Chair: Thank you. Mr. Hardeman.

Mr. Hardeman: Thank you very much for the presentation. It was very interesting.

I know it's problematic, and particularly problematic in the city of Toronto, where we have such an imbalance between the property classes—the industrial/commercial and multi-residential compared to the residential rates. Over the years, that has increased rather than decreased.

I was intrigued, near the end of your presentation, where you said that any new charge that's allowed, they should have to show that they are replacing other property taxes, that the taxes are going down if they are using revenue from other sources to bring it up. If you use that analysis, what would be left of the purpose of the bill, which is to provide the city with the ability to cover more costs?

Mr. Fleet: There are lots of ways under the bill that would allow the city to address additional taxation or additional charges and fees, and the CPTA hasn't said that the city shouldn't have that capacity. What the CPTA is saying is that it shouldn't be hidden. If you're going to deal with a property tax increase, then at least put it out front; if you're going to deal with increases or new fees and charges, put it out front. The current bill, as we understand it, would appear to allow new fees and charges and more property taxes, even though theoretically it's already being covered today under either an existing fee or charge or the existing property tax. So there's a double-whammy problem that exists as we understand the bill.

Mr. Cowan: And the fees and charges are more geared to the user-pay concept. If you're going to strip out, say, garbage collection costs, which are now covered by property tax, yet maintain the property tax rate at the same amount, you're going to be, again, getting more taxes for the same service, which will be unfair.

The Chair: Mr. Tabuns.

Mr. Tabuns: Thank you for the presentation today.

Mr. Fleet, you were talking about a mechanism whereby the clawback, as you call it, could be ameliorated. Could you tell me precisely how you see that balancing

out between capping increases and capping decreases in a way that you think would be far more fair?

Mr. Fleet: Not likely in two minutes, but to give you some sense of it, if the capping is kept lower, the clawbacks are guaranteed to be 100%, or very close to it. When you get sharp shifts, there are opportunities—because this is a long-term thing—to avoid some of the worst of the shifts. The clawback percentages are premised on the notion of static development. Well, there's nothing static—you're either going forward or going backwards—and the stages that you would bring in would have to probably be multiple. You'd have to take a look at assessment procedures; you'd have to take a look at where you'd put the cap if you want to leave one in place. There's no magic at 5% that I'm aware of. Also, what you calculate the cap on: I understand the city of Toronto is varying it this year. Instead of it being based on just taxes, they're basing it on CVA, current value assessment. So you want to use a combination of mechanisms to phase yourself out.

One of the realities is, about half of the tax is business education tax. If you reduce that, because it's hard to rationalize why you tax Toronto businesses more than others, you can direct that savings so that you address the clawback, and the previous government did that in a form. Unfortunately, at least one year the net benefit cost the property taxpayers. So there was a benefit—I think it was 2001—that was worth about \$78 million to the commercial class in Toronto, and by the time the city of Toronto finished with their shifting, it cost them about \$82 million or \$83 million. It was the first tax decrease I've ever heard of that cost the taxpayers money, but that's exactly how it worked out.

The Chair: Thank you very much. We appreciate you being here.

TORONTO COMMUNITY FOUNDATION

The Chair: Our next delegation is from the Toronto Community Foundation. Welcome. We appreciate you being here. I understand you're a former member of the Legislature and cabinet.

Ms. Anne Swarbrick: It has been a while. The security systems and all are relatively newer for some of us.

The Chair: We appreciate you being here, and I'm sure you know how this works. If you could introduce yourself and the organization you speak for for Hansard, and then you'll have 15 minutes and if you leave time we'll be able to ask questions. This is your handout, right?

Ms. Swarbrick: It is. Sorry; I don't have my speaking notes to hand out. They're kind of my chicken scratch in front of me.

Thank you for the time to be here today. My name is Anne Swarbrick; I'm president and CEO of the Toronto Community Foundation. With regard to the City of Toronto Act, I sat on the Toronto Board of Trade task force as well.

The Toronto Community Foundation I know that some people at this table are aware of and some people not, so I'll just describe it. It is an independent public charitable organization, with a mission—actually, part of why I handed out the document in front of you is once in a while I'll refer to something in it. If you turn to page 1 inside the cover, you'll see that our mission is to connect philanthropy to communities' needs and opportunities. Our vision is very similar, I'm sure, to many people around this table: to ensure the vitality of Toronto and to make it the best place to live, work, learn and grow through the power of giving, along with the other best places around our province.

We work to achieve that by the creation of donor-advised endowment funds for citizens of the city, as well as for community agencies. For citizens, it means they have the ability to grant, through that endowment fund, to support the community, pretty close to if they had a private foundation. We currently manage \$153 million in endowment assets, and last year we made grants of \$8.3 million.

We also undertake some of our own community initiatives. A couple of these might sound a bit more familiar to some people who aren't familiar with us. One is that we produce the annual report card on the quality of life in Toronto—Toronto's Vital Signs.

Just a couple of others to mention: We piloted, with the support of this provincial government, a new housing allowance program that has landlords contributing 50% of the cost of those housing allowances. Some of you would have seen pictures in the newspaper of the subway stations that we were involved in redesigning: the Museum, St. Patrick and Osgoode stations.

On the youth violence front more recently, we initiated the Toronto sport leadership program in partnership with the city of Toronto and a number of other partners to help vulnerable youth from the schools get excellent training that not only will result in their coaching certification level 1, leading them to jobs that the city is helping to connect them to, but also good conflict resolution skills etc. Some of you would have noticed that on the weekend the Premier announced an initiative with the faith-based community that we're a partner in as well. That might just provide a bit of familiarity or a jogging of memories.

We want to, from the Toronto Community Foundation, very much commend the Premier, the housing minister and the parliamentary assistant, Brad Duguid, for all the work they've done and their leadership in recognizing Toronto's important role in building a healthy economy, not only for the city but, in partnership with other municipalities, for the province and for the country, and for recognizing that, as the sixth-largest government in Canada, it has been forced to tackle contemporary challenges and build for the future, basically with its hands tied behind its back.

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We very much appreciate their support and hopefully the support of everybody on this committee to give the

city the tools that it needs in the 21st century to build a healthy city, knowing that a strong Toronto does mean a strong province and a strong country for us all.

To do so, of course, we believe that we need a strong governance model. We think that any student of governance knows that for a mature organizational body to achieve its strategic goals, it needs to have the powers to do so. It needs to be restrained only by as few impediments as possible, just those that we are being very deliberate about. We want to commend this bill for helping to take us in that direction and, I think, take us substantially in that direction.

We want to also express some concern, though, that subsection 11(2) and section 25 risk undermining some of that intention. I'm thinking back to a law professor I once had in an administrative tribunal role that I once had in the immigration department who used a slightly different word, but I'll make it a bit more polite, who encouraged us not to inhale and whistle at the same time. We're a little bit concerned that those two sections could be a little contradictory to the overall thrust. I would encourage you to reconsider those.

We do appreciate and commend the proposal to add powers to enable the city to raise revenues. We think, obviously, that it's critical for any government to have the powers to be able to raise the revenues that it needs to do its job. We're concerned, though, that there still won't be a sufficient fair tax balance with the provincial and federal governments. On that note, I would refer you to page 5 of our Vital Signs report. All of the data you see in Vital Signs—if you were to go into the version on the website you can actually check the source of any statistic that's in here. This is all information we've pulled together from independent research, trying to paint a bit of a 360-degree perspective on the quality of life in the city.

On page 5, as you'll see, we refer to the increased tax revenue from the local economic activity in Toronto not flowing appropriately to the local government so that it can adequately fund its local needs and priorities, pointing out that the city government is projected to face a revenue shortfall of \$1.1 billion in 2006, while the provincial and federal tax revenues derived from the Toronto economy are projected to grow by \$1.3 billion in that same year. The revenue shortfall is forecast to grow over the next 20 years unless the city can secure sustainable revenue growth. We think, of course, that the imbalance is rooted in the very nature of the taxing power differences between the municipalities and the other levels of government. For example, in the 10 years between 1992 and 2001, provincial and federal revenues rose by 53% and 45% respectively, while the city of Toronto's revenues grew by only 6%.

As I'm sure many other people have pointed out to you, the costs of the social programs in Toronto have greatly increased since they were transferred to the city, from \$130 million in 1998 to over \$370 million more recently. So our concern is that without progressive income tax or sales tax powers, the city can't possibly be

expected to be responsible for income redistribution programs as well as all of the other areas that it's responsible for simply with property tax, although, again, we really appreciate some of the direction of tax room that this legislation is providing for. It's probably still not as much as needs to be contemplated and acted upon.

In the area of governance, we want to ensure—like many of you, I'm sure—a strong democratic council as the prime decision-maker in the city; for example, ensuring that only a simple majority of council would be required to vote down the mayor's proposed strategic plan or budget or recommended bylaws or city-wide policies; that council be able to delegate local decision-making to standing committees and community councils; and that the municipality be able to determine how many community councils, how many councillors, the ward boundaries etc. So we very much support some of the very clear moves in all of that direction.

We also would state that we support a four-year term of office for councillors in order to give a fair chance for the strategic plan that a council embarks upon to achieve its results. We would also, in addition, support the mayor's role as leader of that council, able to develop sound strategic plans and budgets. We believe that to do so the mayor needs to be empowered to establish a trusted team to work with him or her on a day-to-day basis and therefore needs to be able to appoint an executive committee to assist in the development of the strategic plan, the development of the budgets, and development of city-wide plans for economic development, for example—obviously another extremely important area for the health of our city, province and country.

As part of the checks and balances on that mayoralty power, as I mentioned earlier, we very much would look to what the mayor and the executive committee come out with, being recommendations to council that are then—a 50%-plus-one majority being required—approved or voted down. The mayor, to be able to undertake that leadership job effectively, must be accountable for the alignment of resources and the services through having the responsibility for the hiring of the city manager, who should be accountable as his or her chief operating officer, essentially.

Having said that, I just want to add that I know some people conclude that that kind of a process would necessarily lead to a political party process at the city level. Of course, some people want that. I certainly would not be encouraging that because what we see is that, for example, under the leadership of the current mayor, we actually have a process working really effectively where this mayor is being able to draw on the talents of people across all party lines and build, I think, some of the best of the strength from taking contributions from a broad range of perspectives. Imposing political parties or moving towards political parties at the municipal level risks creating unwanted barriers to people contributing the best of their talents to the overall municipal governance team.

We believe it's also key that the city government have the power to shape the urban environment and con-

sequently encourage this government to give the city new powers in land use and planning.

I would conclude at this point by again saying thank you so much for the time today to be heard, for all of the work that you're doing on behalf of us all, and for the leadership that I think this government and those who are supporting this initiative are showing in being bold to try to help make sure that our city is able to face today's challenges and build Toronto's future from its annual activities now, hopefully starting very soon, as of the next municipal election.

The Chair: Thank you. You've left about a minute for everybody, so I'd ask everybody to be somewhat brief, beginning with Mr. Hardeman.

Mr. Hardeman: Thank you very much for the presentation. I do appreciate it. I guess I'm having a little trouble. You mentioned the fact that you were in favour of the tax room created for the city in this bill. In fact, there are opportunities for increased taxation, but there is no room being made; they're just told where they can put extra taxation. Do you believe that extra taxation is the answer, or transfer of taxation is the answer?

Ms. Swarbrick: I think there's probably some combination of both required. The bottom line is that the city needs to be empowered to do its job and to be able, as a mature adult, to determine where it is that revenues might be sought to support its initiatives. But I certainly do also agree that if the city is being responsible for income redistribution policies, social programs etc., either there needs to be a transfer of the funds to support that or a transfer of those responsibilities back up.

The Chair: Thank you. Mr. Tabuns.

Mr. Tabuns: You referred to sections 11 and 25, which give the province an ability to go in there if they don't like the way things are developing and change the city's powers. Can you enlarge a bit on your concerns about that and why you think the province should not be including those items in this legislation?

Ms. Swarbrick: I just think that if the point is to try to ensure that the municipal government, the sixth-largest government in this country, is able to act as an adult body of government able to make its own decisions, part of giving it democratic control and responsibility is to let it have the consequences for those decisions and not to have a parent body sweep in and say, "No, we don't like what you did," or, "We don't like what we anticipate you might do." I think the government needs to be responsible to the citizens of the city, like every other level of government is.

1700

The Chair: Mr. Duguid.

Mr. Duguid: Ms. Swarbrick, I want to thank you for your deputation; well thought out. I think certainly myself and the government are in agreement with a lot of what you said.

We're trying to offset the previous downloading. It's not happening all at once, but it's happening significantly over the last 24 months, when you look at our investments in transit, public health, our investments in land

ambulance and housing. We're making some progress, but I think we share your belief that we still have a way to go in that area.

I don't have any questions. I just want to thank you for a well-thought-out submission and for the great work that your foundation has been doing for the city. Working together, we're certainly going to get to a greater place as a city and as a municipality. We thank you for that.

Ms. Swarbrick: Thank you for all your work. You're doing a great job.

The Chair: Thank you for your submission and passion.

GUY GIORNO

The Chair: Our next delegation is Mr. Giorno. Welcome.

Mr. Guy Giorno: Madam Chair, members of the committee, thank you for entertaining me this afternoon. My name is Guy Giorno. I'm here in my individual capacity.

Since leaving Queen's Park, I've returned to the practice of law, and one of the things that I've done is develop an expertise in the area of the law of lobbying across Canada. I'm co-author of a text on the subject. In fact, tab 6 of my presentation, which I won't take you through, lists a number of the articles and works I've written on lobbying law in general and lobbyist registration code in the city of Toronto in particular.

The reason I'm here before you is because, while I believe that sections 164 and 165 of the new City of Toronto Act are a good step, I don't believe that they're strong enough, or at least they're not clear enough, to allow the city to implement all aspects of its proposed lobbying control framework. There are five concerns that I wanted to raise.

As currently drafted, it's my opinion that Bill 53 fails to address five of the fundamental lobbying control issues. They are as follows: I don't think Bill 53 clearly empowers the city to enact a binding and enforceable code of conduct for lobbyists; I don't believe it clearly allows the city to impose a cooling-off period or a post-service restriction on former councillors or former staff members; I don't believe it clearly gives the city the power to prohibit contingency fees; I don't think the enforcement provisions are tough enough, and I'll get to that; and finally, absent from Bill 53 is any power to mandate councillors' participation in the registry.

I'll just note that Madam Justice Bellamy, in her excellent report, made 32 recommendations which deal specifically with lobbying. In my opinion, Bill 53 fails to address more than half of those. Tabs 2, 3 and 4 of my presentation show the Bellamy recommendations that I think Bill 53 fails to address, the ones that it does address and then the third list is Bellamy recommendations I think the city already has the statutory power to address.

I also wanted respond to what I think might be a question, and that is, "Doesn't section 8 of the bill, this broad power to make bylaws, cover the situation?" My

answer is that I don't believe that power is clear enough. When you remember that the city of Toronto faced legal challenges in the past from the lobbying industry—it was taken to court over its power to regulate and control the lobbying process—you've got to realize that lobbyists will be willing to litigate, to go to court, to challenge anything the city does. So it's to the benefit of the city, the province and the citizens of Toronto to have all the power that the city needs clearly and explicitly spelled out in the legislation so there aren't going to be legal challenges, there won't be expensive and unproductive wrangling.

I also note that there are about two dozen different sections in Bill 53—and I list them in my submission to you—where you go that extra step, where the legislation goes the extra step and says, "Despite this broad power in section 7 and in section 8, we want to explicitly make clear the city has this power or that power." I think that that lobbying control is important enough to give the same treatment, to make sure that there's explicit power.

I want to just very quickly then talk about the five gaps as I see them. I think that while there's explicit power—in fact an explicit duty—to have a code of conduct for public officers, there's no explicit power to impose a code of conduct on lobbyists to regulate their behaviour. I think the city should be explicitly given that power and that it should have the power, by bylaw, to make it an offence for lobbyists to contravene that code.

I also note that Justice Bellamy, in dealing with lobbyists' conduct, found absolutely offensive the practice of bundling; that is, the role of lobbyists in collecting political contributions and delivering them to city councillors and other candidates. She proposed that that practice be prohibited, that lobbyists not be able to fundraise other than making their own political contributions. It's my opinion that if the city is to have the power to prohibit that practice, to prohibit lobbyists from exercising their rights to fundraise under the Municipal Elections Act, it needs that explicit power in Bill 53.

The second issue I want to address is the cooling-off period, post-service restrictions. Again, a cooling-off period of post-service restriction affects a person's employment and livelihood. Therefore, if a city is to have the jurisdiction to limit a person's rights to seek employment, to conduct his or her living, that power needs to be explicitly spelled out in legislation. I should add, by the way, that the province of Quebec, by provincial legislation, has imposed a cooling-off period, a post-service ban on every municipality in the province, and that's detailed here.

The ban on contingency fees is the third thing I wanted to note. Justice Bellamy said contingency fees or success fees should be banned. Quebec has already banned contingency fees for all municipal lobbying. The federal government is moving to ban them. Toronto, in my view, should have the same power. Again, however, I believe that Bill 53 should be amended to make it clear that when the city passes a bylaw dealing with lobbying, it should have the power to prevent a lobbyist from

charging such a fee and it should have the power to prevent an employer or a client from offering or paying such a fee.

I then want to turn to appropriate sanctions, which is the fourth gap as I see it. The way Bill 53 is currently drafted, all that Toronto can do to enforce its lobbying bylaw when it makes it would be to impose fines. Fines are useful, but in my opinion they are hardly sufficient and reliance on fines is inconsistent with what I'd call the best practices having regard to all the lobbying laws across the country.

When it comes to enforcement, penalties and sanctions, the gold standard in Canada is the new Newfoundland and Labrador Lobbyist Registration Act. That law provides that upon conviction, the court may order that the proceeds of lobbying improperly obtained—the lobbyist breaks the rules—that his fees, the money he's gained or what his client has benefited can be forfeited, can be confiscated and returned to the province.

I propose and I believe that the City of Toronto Act should give Toronto the same power to apply to a court, after conviction for a lobbying offence, to have the improperly obtained lobbying proceeds forfeited and returned to the city. I also note that Justice Bellamy, in talking about codes of conduct and lobbyists' rules, stated very explicitly, "The rules must have teeth."

Real teeth in the real world means more than fines. Some of the other sanctions that are appropriate to impose would be to allow the city, once there's been a conviction for improper lobbying, a violation of the rules, to prohibit people, for a temporary period or whatever the bylaw provides, from doing certain things. Those things would be, in my view, a temporary disqualification from doing business with the city, disqualification from serving in public office, disqualification from lobbying the city or engaging a lobbyist to lobby the city on your behalf, disqualification from receiving funding or a grant or a benefit from the city.

Now, I'm not saying that the city must impose those sanctions. I am saying that it's appropriate out of respect for a mature level of government to give the city the statutory authority, if it chooses to exercise it, to beef up its lobbying bylaw with those sanctions, to give its lobbying bylaw, as Justice Bellamy said, "real teeth."

The final issue I want to address is councillor participation in the registry. I've written about this several times in the past and actually spoke to the policy and finance committee of city council about this last fall.

The greatest weakness of Toronto's current voluntary lobbyists' registry is that it relies on the co-operation of individual councillors and yet historically three quarters of councillors don't participate. The problem is that Toronto cannot compel councillors to participate, and the irony is this: Even though it is city council's own policy that councillors should co-operate with the current lobbyists' registry, they don't, or most don't. In fact, a recent report from city staff to the policy and finance committee made that clear. It referred to the lack of power to compel councillors to take part and the lack of

power to sanction those who don't. It's up to the city to determine whether it does or does not want city councillors to provide information to the lobbyist registry. The point I'm making is that Bill 53 should clearly give the city the authority to make that requirement, to impose that requirement, if it chooses to do so.

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That summarizes my five recommendations. If you turn to tab 1 of my presentation, I've laid out the existing text of sections 164 and 165 of the proposed City of Toronto Act in Bill 53. Then, in orange, on the right-hand side, I've proposed amendments, additional language which would beef up, give greater power or give greater certainty to ensure that the city of Toronto has all the powers it needs to implement its lobbying control framework.

In closing, I'll just make this one observation: I've referred a lot to Justice Bellamy. I've also referred to a lobbying control framework. The city has already identified many of the features that it wants inside its lobbying control framework. The things I've discussed, the things I've said lack sufficient statutory authority or clear statutory authority in Bill 53 to impose are things that the city says it want to introduce. It says it wants to ban contingency fees. I don't think the power in Bill 53 is clear enough. It says it wants the power to impose post-service restrictions, a cooling-off period. I don't think Bill 53 is clear enough. Out of respect for the city as a mature level of government, if that's what it says it wants—and I think it's excellent public policy to impose those restrictions—there's no reason not to make absolutely clear that the city of Toronto will have that authority.

Members of the committee, Madam Chair, I thank you for your time.

The Chair: Thank you. You've left about a minute and a half for each party, beginning with Mr. Tabuns.

Mr. Tabuns: Mr. Giorno, thanks for that presentation. Are there any other sections of the act that would have to be amended to allow these amendments to go forward in an unhindered way?

Mr. Giorno: No. I've examined that. There are references to the Municipal Elections Act and fundraising later. I don't think those would need to be changed. I think that everything I've talked about can be accommodated fairly within section 165, actually.

Mr. Tabuns: Have you talked to the city of Toronto about your amendments to see if in fact they would be comfortable with what's been put forward?

Mr. Giorno: Yes—I've not done that. I've obviously spoken to the city of Toronto about my concerns about lobbying generally. I do know this: The things I've asked about are things they say they want to introduce as part of their lobbying control framework. I'd like to think the city would want clear authority to do that.

Mr. Tabuns: Okay. Thank you.

Mr. Duguid: Mr. Giorno, thank you for taking the time to join us. It must have been a considerable amount of time and thought that's gone into actually even drafting the amendments for us to make it as easy as possible.

Mr. Giorno: Thank my partners for letting me do it.

Mr. Duguid: Thank your partners on our behalf too. We appreciate it.

There are some things that have jumped out at me that are in common, if I recall, with Toronto's submission and some of the things that Toronto is looking for as well. I can assure you we'll take a good, strong look at this to see what, in fact, may work.

It's refreshing to hear you refer to Toronto as a mature level of government. I won't get too far into that in terms of the partisan political thinking there, but, as somebody who was on the other end of the government in the old days, it's good to see you coming to that conclusion.

Mr. Giorno: The grief you can give me over that is nothing like the grief I get when I actually appear at city council, if you can imagine that.

Mr. Duguid: Well-deserved, I would add. I thank you for your help here, and we'll certainly take a very good look at this.

Mr. Hardeman: Thank you very much, Guy. It's good to see you again. It is a very thoughtful and well-presented presentation, as was mentioned by the parliamentary assistant. I would hope that the government would take a serious look at it, not that it's in a partisan way, but, in fact, from the presentation, it would improve the quality of the lobbying part of the bill. So I would support those amendments as they come forward. Again, thank you for all the work you've done to help make this a better piece of legislation.

Mr. Giorno: Thank you.

The Chair: Thank you for being here.

ARCHITECTURAL CONSERVANCY OF ONTARIO

The Chair: Our next delegation is the Architectural Conservancy of Ontario. Welcome. You know you have 15 minutes when you get yourself settled. If you could say who you are, your organization, for Hansard, then you'll have 15 minutes.

Ms. Catherine Nasmith: I'm Catherine Nasmith, vice-president of the Architectural Conservancy of Ontario. Just briefly, we've been in existence since 1933; we were founded by Eric Arthur. We have chapters across the province of Ontario, and we are expanding.

I wanted to address the changes in the bill that affect demolition provisions for listed buildings. I'll do that very quickly at the beginning of the presentation. After that, I would like to tell you a little bit about the ACO and what we are observing in Ontario a year after the passing of Bill 60, which amended the Ontario Heritage Act. I will leave you with some thoughts for future legislation to preserve Ontario's fast-disappearing heritage, which is a little offside.

First, the discussion of today: The ACO is in full support of including provisions for a 60-day holding period on the issuing of demolition permits for listed buildings. As you may be aware, we recently lost the Franklin Carmichael House in the former city of North

York because it was listed, not designated. You may be aware that the provisions for designation are somewhat onerous and that most municipalities rely on listing to identify most of the buildings of heritage significance. For example, in Toronto there are approximately 6,000 properties on the inventory of heritage buildings, but only 20% are designated.

Generally, listed buildings are moved forward for designation when they are threatened, so a 60-day notice period for council to decide whether or not to take action to prevent demolition would allow for the process. Without this provision, 80% of the buildings on the inventory are at risk.

In the past, informal notice arrangements existed between the chief building officials and other departments, allowed for notice to be given that an application for demolition had been submitted, and often action could be taken in time to prevent losses. But since Bill 124, the chief building officials are no longer able to exercise such discretion.

The second point: We understand that the rest of Bill 53 won't come into force for some time. We'd like you to make sure this provision regarding demolition comes into effect as soon as the bill is passed, because we are losing buildings because of this new provision.

The third thing is a new ask that we're making. We would like you to consider introducing a parallel provision requiring municipalities to give 60 days' notice to the public prior to issuing demolition orders for listed or designated buildings. This would give time for the public to find means to save heritage buildings. I will give you a couple of recent examples as the reason behind this request.

In Kitchener two months ago, there was a highly controversial order issued to demolish the former Forsyth shirt factory, a designated building that had been purchased by a previous council in order to ensure its stewardship. Unfortunately, the municipality had failed to maintain it and a subsequent council sought to clear the site by issuing an unsafe building order and having it demolished, notwithstanding that there were private developers interested in purchasing and renovating the building. The building was tough to take down, lending credence to claims that it could have been reused. Sixty-day notice might have given time for the public to intervene.

Another situation is in Paisley, Ontario. The owner of a heritage hotel on the main street is fighting an order from the council to demolish his building. This is a bit of a turnaround, where the municipality is forcing a private owner to demolish a designated building. The council in question had forgotten that the building was designated. Anyway, the property owner went to a judge, and the judge gave him some time to get counter engineers' reports and try to save the building. For this property owner, this was a really onerous case, because he was not only going to lose his building, which was his means of livelihood, but he was going to have to pay back the money it would take to demolish this property. It seems

to me that the interests of conservation would be much better served by taking that money and loaning it to this particular property owner. A 60-day notice from a municipality to property owners and to the public that they're going to issue an order for demolition would buy time to find creative solutions to save properties. Generally speaking, 60 days is not very long in the life of a building, and it's a pretty rare situation where a building is going to collapse within that time frame.

Let me just wander into another territory, because I've given you my three main points. Preventing demolition of important buildings is an important cultural goal. The ACO would like to commend the McGuinty government for bringing Ontario's heritage legislation out of the Dark Ages last year. But it's important to understand that saving buildings for cultural reasons is also good for the environment. You might be interested to know that according to stats prepared by Heritage Canada, buildings account for 35% of Canada's landfill. So conservation of our building stock is an important societal goal, which leads the ACO, the Architectural Conservancy of Ontario, to ask, why is demolition a right in Ontario?

1720

Our heritage conservation system has a set of rather complicated laws to prevent our heritage from being demolished, but it might be simpler to reverse the tables and make it harder to demolish any building. The onus should be on the owner to prove that it's no longer usable.

We need to move towards a conservation approach to our existing buildings. As Andrew Powter said at a recent ACO dinner, the greenest building is the one that already exists, and that's because of the resources and energy embodied in that building. Our buildings codes should encourage longevity, repair and renovation, and make it much harder to demolish and fill up our landfills.

We have 13 branches in Ontario and we're growing. One of the things that's interesting about the reasons we're growing right now is that the new heritage laws and the new provincial policy statements that say that heritage resources shall be conserved have created a situation where communities know whom to blame when a building comes down. Councils can no longer hide behind, "We haven't got the laws to protect them."

What's happening is that even though we have the new laws, the kind of culture of compromise of our heritage persists in councils and there's a lot of failure to designate in things going on. And it's becoming political: Communities are starting to say, "We want you to use these new powers." One of the ways they're organizing is by forming branches of the Architectural Conservancy of Ontario. We have a new branch forming in Peterborough; we've just formed a new branch in Guelph. We had an inquiry from Brampton; we've had inquiries from up around Owen Sound. We're going to become a bigger force in the province.

It's very important to make sure we do protect not only our heritage buildings but all of our existing build-

ing stock. We as a society simply can't afford to throw it away. Thanks for your attention.

The Chair: Thank you. You've left about two minutes for every party to ask you a question, beginning with Mr. Lalonde.

Mr. Jean-Marc Lalonde (Glengarry-Prescott-Russell): Thank you very much for taking the time. I can see that you've done some good work. You're the type of person I would like to see in every small community in Ontario. Being a former mayor, it was a real problem to try and preserve heritage. It's too bad that not all the municipalities have a heritage committee or bylaws to preserve our history, and also to say thank you to our pioneers of this country.

I'm pretty sure the city of Toronto would have a heritage committee in place.

Ms. Nasmith: We do.

Mr. Lalonde: Being the largest city in Canada, they certainly have that. I would say that if you have some concerns at the present time, you should go after the municipal councillors to make sure they know that every building that you feel is of heritage in the province of Ontario has to be preserved. We know that developers don't care about heritage very often; they just want to make a buck. It's too bad our history is gone whenever municipalities issue demolition permits.

Most of the municipalities, though, do have a bylaw in place. Really, if you apply for a demolition permit, they would review the effect that it would have in the community. When I say "effect," it does include heritage buildings. But the municipality also has a certain period of time where the replacement of that building has to—if it doesn't meet the heritage bylaw in place, very often they would say, "We need a certain type of building that would not take the esth  tique," we call it in French. I don't know what it is in English.

Ms. Nasmith: Aesthetics.

Mr. Lalonde: —"aesthetics of the area." But do you think that the city of Toronto would really forget about the heritage of the city by our passing Bill 53?

Ms. Nasmith: Just to be clear, this provision in Bill 53 will apply to municipalities all across the province; it's applying to the Ontario building code. But in the past, the city of Toronto has been able to keep listed buildings and designated buildings, and to protect the listed buildings through the chief building official giving informal notice to the heritage committee that an application has come in. Under Bill 124, that's no longer possible, unless a building is actually designated under the Ontario Heritage Act, which, as you as a former mayor will be aware, is a more complicated process than just keeping the list. The chief building official has to issue the demolition permit. That is how we lost the Franklin Carmichael house, part of the Group of Seven, in February. This bill contains provisions that will amend that power all across Ontario, but it doesn't deal with the situation of a municipality ordering buildings demolished that the community would like to protect.

Mr. Lalonde: If it is not a part of the—

The Chair: Thank you. Sorry, Mr. Lalonde; we're out of time. Mr. Hardeman?

Mr. Hardeman: I think it's an interesting situation. As we're talking about Bill 53, in fact it is the bill to give more power to the city of Toronto to develop the community that they believe their people want. When it comes to protecting heritage buildings and heritage districts and so forth, I think there is no greater attribute in a community that designates the type of community you have and want to keep. So anything we can do in this legislation to assist the city to make that choice as to how they believe they should preserve their heritage in the city is important, and I would support that in this bill.

We thank you very much for making your presentation. I think anyone would be hard-pressed to say that this isn't a responsibility that should be at the local level. It's best done there. In fact, I would likely support getting the province right out of that designation and letting local government make the decision of how they can protect their local communities with certain standards.

Ms. Nasmith: With respect, I would encourage the province to get more involved in setting standards that apply across the province and preserving the heritage, because local municipalities are often up against all kinds of pressures and they don't see the bigger picture.

Mr. Hardeman: Yes, but if we assume that local government is a mature level of government that will make the best decisions on behalf of their citizens, it's hard to say that they would not make the best decisions based on heritage. It's kind of contradictory.

Ms. Nasmith: I really wish that were true. We're just starting to have a law that—

Mr. Hardeman: That's actually what I wanted to hear in the answer.

The Chair: Thank you. Mr. Tabuns?

Mr. Tabuns: Catherine, thanks for the presentation today. Which particular section of this act would have to be amended to actually give effect to what you've put forward?

Ms. Nasmith: It's the section that applies to Bill 124.

Mr. Tabuns: The section in Bill 53 that applies to Bill 124.

Ms. Nasmith: It applies to the Ontario building code.

Mr. Tabuns: Okay. I don't have a question beyond that.

The Chair: Thank you very much. We'll make sure we know that.

1730

TORONTO CATHOLIC DISTRICT SCHOOL BOARD

TORONTO DISTRICT SCHOOL BOARD

The Chair: Our next delegation is the Toronto Catholic District School Board; Mr. Carroll. Good afternoon.

Mr. Oliver Carroll: Thank you, Madam Chair and members. I'm joined today by Peter Lauwers, who's a

lawyer with Miller Thomson and is also a counsel to the board. My friend Sheila Ward, who's chair of the Toronto district board, sends her regrets. She has to deal with some problems with portables, which we will talk about a little further into this, and that I think everybody will see become real problems as the year goes on. So I'm speaking on behalf of both boards.

Let me just give you some background. While education is a provincial responsibility, and this act does recognize that, the fact of the matter is that this act is unique in regard to municipalities, and we think there also has to be some recognition within it for school boards and for the type of work they do.

Just some background on the school boards themselves in Toronto: One in six students in Ontario goes to school here in Toronto. The two boards between them, as you can see from our submission, are the largest land-owners in the city of Toronto. We own in excess of 5,000 acres of land. Between us, we have 770 schools—200 with ours, 570 with the Toronto District School Board—and another 100 pieces of land here, there and all over the place.

Schools, as we all know from our own communities, are everywhere in every community in this province. No other government institution has the reach into a community that the schools do. When you take a look at our budgets—I hear a lot about the city of Toronto budgets—our combined budget is in excess of \$3 billion. I wouldn't want to suggest that we're an order of government—maybe we're a half or a quarter order of government—but we certainly are a mature order of something. At this point in time, while we support the changes in the City of Toronto Act, we think they don't go far enough when it comes to recognizing the investment that the government, that people have made in the city of Toronto when it comes to school boards.

I'd like to talk about two things. Mr. Lauwers will speak in a little more detail about some of the technical matters. The reason he's going to do that is because, if I tried to do that, he would continue to say, "What Oliver really meant to say...." so I'll leave him to the area he's expert in. He would never do that, of course.

I'd like to talk specifically about a piece of legislation currently in place, that was enacted in 1971 in the City of Toronto Act, that is not being repealed by this legislation. It is commonly referred to as the railway lands. What the province did, and what the city and the school boards agreed to, was to take an area around the railway lands and allow the school boards, in consultation and in conjunction with the city, to levy educational development charges to build new schools. At this point in time, we can't do that anywhere else in the city of Toronto. The railway lands are, in many cases, built out. What we're suggesting is that the act in front of you, Bill 53, contain a provision similar to that contained in the railway land legislation, if I can call it that, that subject to either the school boards having the authority, in consultation with the city, or the minister having the authority, to apply the same types of provisions that are in that bill to the rest of the city.

What's going on—and you see this in communities across the province, not only here; Mr. Duguid, who represents Scarborough, sees it in his community—is that there is a tremendous degree of infill occurring. There are subdivisions going in that have 1,000, 1,500 and 2,000 houses. The developers and the community bear no responsibility for ensuring that new schools are built in those areas. While this is a provincial responsibility, at the end of the day the fact of the matter is that the province is really not in a position to address this issue in the communities. So we have communities going in all over the place in the city of Toronto where we are not building schools. We are continuing, more and more, to bus people and we're adding portables to the existing school stock.

At some point in time, these communities are going to require, are basically going to say, "We need schools where our children live," as opposed to some place that's several miles away. A provision like the railway lands, were it applied to the full city, again subject to consultation with the city and maybe with a regulatory power for the minister, would allow us to address those issues as they arise. We have no other means by which to build schools. When people build new houses—and it's generally young people—and move in with their growing families, they expect schools.

Our developers, who will cry about any extra costs, are the very first ones to put up large signs, as you'll see in Scarborough, saying "New school coming," "New school will be built here," despite the fact that of course they have no say over where the school goes. They have no input into it and they're not going to contribute a nickel to it. We actually have a situation in a place called Morningside Heights where the community has come to both school boards complaining that they were promised a school by the developer. We are happy to be in partnership with developers and anybody else, but we think there has to be a recognition that, if we're going to build new schools, if we're going to renovate the schools we have, there has to be some type of mechanism for us to generate the funds to do that.

With that, I will turn the issues of portables and site plan control etc. over to my friend.

Mr. Peter Lauwers: Thank you, Mr. Carroll. I'm addressing the issue of site plan control relating to portables. I pick it up at page 4 of the brief we've submitted to you.

Bill 53 substitutes section 114 of the City of Toronto Act for section 41 of the Planning Act. If I may, I'll just read to you a couple of things from section 114 that are kind of unique in what it could require by way of site plan approval from an authority like a school board. The municipality can require that the board submit to matters relating to exterior design, including the character, scale, appearance and design features of buildings. It can require sustainable design elements on any adjoining highways, including, without limitation, shrubs, trees, hedges, plantings and so on. Through subsection (10), it can require land for the widening of highways, and it can also require facilities to put traffic signals on adjoining streets.

Just think about that kind of a radical change and apply it to the placement of a single portable on a school site. It doesn't make any sense, but that's in fact what is happening in the city of Toronto. When we go in for site plan approval, we need to submit to site plan control, and this new legislation will significantly cause difficulties for us. We're suggesting an amendment to the act to make it plain that the placement of portables will not trigger the need for site plan control.

This problem is particularly troublesome these days, because this government has done good things with relation to primary class size, Best Start and daycares, but in an existing mature school system, that requires the placement of portables to accommodate those new uses. On page 5 of the brief, we're looking for a simple amendment that would exclude the placement of portable classrooms by the district school board as a way around the problem we're now talking about.

We would also like an exemption specifically from the controls over external design features. You know how plain portables are, eh? They're plain, and that makes them cheap and easy to deal with. If we have design features required of them that the city imposes on us, they become way more expensive and way more difficult to deal with and, from our perspective, unnecessarily so. So we're asking that there be an exemption from the design features relating to portables only—not to schools. We understand that the school issue is a different issue; permanent facilities are in a different category.

Later on in our brief, it deals with site plan conditions. Typically, in our experience, municipalities, including the city of Toronto, ask for more than they're entitled to get when they're looking for site plan control because they know that if you don't agree, they can hold up the building permit process. In our situation, with Father Redmond, we spent years trying to sort it out before we finally got a building permit. At page 7, we recommend a provision in the act that essentially is this: The school boards will sign a site plan agreement as required, but if there's a provision in the site plan agreement that is not within the jurisdiction of the city, the school board can appeal that to the Ontario Municipal Board. In other words, you don't have to go and appeal first; you appeal after you sign the site plan agreement. This will encourage the city, from our perspective, to be more responsible in what it requests so that we can actually have a much more co-operative relationship with the city than we now have.

We're not suggesting, by the way, that any politicians at the city are badly motivated; that isn't the case. The planning staff do try to do their best, but in many cases they treat the school boards, regrettably, like private developers.

Those are the suggestions we're making with respect to the bill, which, as Mr. Carroll has already indicated, the school boards otherwise support.

The Chair: You've left just over a minute for each party to ask a question, beginning with Mr. Hardeman.

Mr. Hardeman: Thank you very much for the presentation. I know it's all public money and there's only

one taxpayer, but if there's a need for the city to have those controls in the bill for the general industry to build in communities, how would one justify not applying those same controls for looks, aesthetics and so forth to the school board?

Mr. Carroll: I think the only one that Mr. Lauwers touched on was portables. Portables basically look the same. Our experience, unfortunately, with the city, especially some of the staff, is that they decide that for a variety of reasons we need to do something differently. Things like portables are cookie-cutter. When we need them, unfortunately, we need them right then, and to get into protracted discussions with planning staff around them either complicates parents' lives with getting children into schools or we end up busing people to other schools. We're saying that portables should be exempt from that particular requirement.

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Mr. Tabuns: Thanks for the presentation. Two questions. First, you talked about a railway lands amendment. Do you have the text for that? The second question is, have you met with the city of Toronto to see if they're in agreement with the proposals you've brought before us today?

Mr. Carroll: The first thing is that we do have a copy of the bill somewhere and we're quite happy to get it to you. The second thing is that yes, we have met with the city, including the mayor. Everybody conceptually agrees that we need to do something, that we basically have land that belongs to the community. The problem has been that the province and the city have been so focused on trying to get this legislation lined up and into the House and through it that they haven't been able to deal with all the other issues that have come along. We have staff, both from the boards and from the city, working on it, but unfortunately we're into one of those situations with staff where many of us will have moved on before we actually get to deal with this issue. It's a current issue, and we need to deal with it now.

Mr. Duguid: I'll make a quick comment and pass it over to Mr. Lalonde.

The Chair: It had better be one comment, actually. Just one of you can speak. I don't have enough time. I'm sorry.

Mr. Duguid: Well, I won't even take the minute.

The Chair: That's all you have. Go.

Mr. Duguid: Okay. I just wanted to thank you for the work you're doing with our government. I don't think I've been to an announcement having to do with education that I haven't seen you involved in in some way, so I want to thank you very much, Mr. Carroll, for your work in doing that.

We will take a look at the site plan issue with the portables and see if there's something we can do there. We'll take a look at it. The issue with development charges—that's a little bit bigger question than we're dealing with in the City of Toronto Act here, so that's something that's probably going to be subject to further discussions and debate.

Mr. Lalonde?

Mr. Lalonde: Time is up, I guess.

The Chair: A short question—really short.

Mr. Lalonde: I was going to say that it's nice to see that school boards are interested in the planning of their community. It's very nice to get you people involved.

Mr. Carroll: If you'd give us 15 more minutes, we could tell you what we're doing.

The Chair: We don't have that much time.

Mr. Carroll: Thank you, Madam Chair.

The Chair: Thank you very much. We appreciate your being here.

POLICE ASSOCIATION OF ONTARIO

TORONTO POLICE ASSOCIATION

The Chair: Our last delegation of the day is the Police Association of Ontario and the Toronto Police Association. Good afternoon. It must be OMERS—oh no, it isn't. It's nice to see you again. Welcome.

Mr. Bruce Miller: It does seem a little quieter today than the last time.

The Chair: It's much quieter. We're pleased to have you here. You may hear the ringing of bells shortly, and that's the reason for my hurriedness. I want to get to your delegation so we get to hear all of your presentation. If you could identify yourselves and your organizations for Hansard, you'll have 15 minutes.

Mr. Miller: Thank you. My name is Bruce Miller and I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line police officer for over 20 years prior to taking on my current responsibilities. With me is Dave Wilson, the president of the Toronto Police Association. The Toronto Police Association represents the 7,500 front-line police personnel in Toronto. Dave has been a police officer for 18 years and is also a member of the PAO's board of directors.

The Police Association of Ontario is a professional organization representing 30,000 police and civilian members from every municipal police association and the Ontario Provincial Police Association. The PAO is committed to promoting the interests of front-line police personnel, to upholding the honour of the police profession and to elevating the standards of Ontario's police services. We have included further information on our organization in our brief.

We appreciate the opportunity to provide input into this important process. We would like to focus our attention on the importance of these proposed legislative changes to community safety. We plan to address two issues today.

The first issue centres on the need for the province to retain an oversight role for policing and community safety. We appreciate the fact that community safety has been, and continues to be, a priority for this government. We would like to congratulate the government for not altering the composition, governance or important responsibilities of the Toronto Police Services Board.

Independence, impartiality, equal treatment and universal access are cornerstones of policing in a democratic society. Police services must be, and must be seen to be, beyond the control of any political or private interest. Police services must be allowed to focus solely on community safety.

I think that everyone realizes the challenges to community safety that police are dealing with across Ontario. Last fall we released an Innovative Research Group poll that included some of the following findings:

Over half of Ontarians expect that they or a family member will have property stolen as a result of a break-in within the next five years;

More Ontario residents than a year and a half ago feel that they or a family member will be physically attacked in the next five years, up six points to 32%;

An overwhelming majority—80%—say that gun violence has worsened in the past five years; and finally,

Four-out-of-five Ontarians continue to believe that police services are one area that should not be cut back, regardless of the province's current deficit situation.

These results demonstrate that members of the public believe that public safety is a priority issue and that a strong provincial role should be maintained. Although this legislation pertains to the city of Toronto, we understand that the Association of Municipalities and its members will argue for similar provisions to be replicated in the Municipal Act governing all other municipalities. For that reason, we are pleased that this bill affirms the distinct and unique challenges faced in order to keep Ontario's communities safe.

While we are pleased that the independence of police oversight from other municipal services has been retained, we would like to raise one area of concern. The proposed legislation would allow the city of Toronto to "pass bylaws extending the hours of sale of liquor in all or part of the city by the holders of a licence and a bylaw may authorize a specified officer or employee of the city to extend the hours of sale during events of municipal, provincial, national or international significance." We are concerned that this may have a negative impact on community safety.

In 1996, the hours of sale for licensed establishments were extended to 2 a.m. This was done in part to address some of the inequities facing businesses that operated at or near provincial and national borders. The new 2 a.m. closing time brought Ontario in line with other jurisdictions. We have spoken to our members in Ottawa, Niagara Falls and Windsor. Police services in those jurisdictions faced many challenges coping with people who were drinking and driving in an effort to take advantage of extended hours in licensed premises in neighbouring communities. Windsor is still faced with the challenge of young people coming across the border to take advantage of the lower drinking age in this province. As noted earlier, we understand that many municipalities will advocate for parallel provisions to be included in an updated Municipal Act. This will indeed lead not only to each municipality having different

closing hours for licensed establishments but, in fact, different hours in part or parts of each municipality.

Both the Police Association of Ontario and the Toronto Police Association recommend that Bill 53 be amended to revoke the provisions proposing to amend the Liquor Licence Act to grant the city of Toronto the authority to extend bar hours, and further, that such a provision should not be extended to other municipalities in a revised Municipal Act. Hours of service in licensed premises need to be consistent across the province in order to ensure community safety. Maintaining consistency in liquor licensing provisions will help to ensure that additional problems associated with drinking and driving do not occur.

Members of this committee understand that police services across Ontario are facing increased challenges and demands for service that cannot be reasonably met given the current resources. The provisions noted above in Bill 53 will have an adverse impact on our capacity to respond to community safety matters, should large numbers of people seek to take advantage of extended hours in some locations. Community safety is an issue of provincial interest and, as such, demands consistency across Ontario.

We'd like to thank the members of the standing committee for the opportunity to appear before you once again, and would certainly be pleased to answer any questions that you may have.

The Chair: Maybe I could ask all committee members to just ask one quick question, if you have one, beginning with Mr. Tabuns.

Mr. Tabuns: Your concern about different closing hours: Have you got experience in other jurisdictions that you can cite that gives you the basis for that assertion that this will be highly problematic?

Mr. Miller: We certainly saw it in locations such as Ottawa, when Quebec had extended hours prior to 1996. We saw large numbers of people going across to Ottawa. Unfortunately, many were driving. They'd come back later, and it was a drain on police resources. We've seen the same thing in Windsor and Niagara Falls as well.

The Chair: I think we're going to have 10 minutes before we have to be up in the House, so if you can keep your answers short and the questions short. Mr. Duguid, did you have anything to say?

Mr. Duguid: No, just that committee members will note on the record that Mr. Miller looks like he's a lot healthier and lost some weight since the last time we saw him here. Congratulations. You look like you must be—

Mr. Miller: Thank you. It's been 40 pounds. I can see why you get elected again, Mr. Duguid.

Mr. Duguid: Thank you for being here. We'll take a look at your submission.

Mr. Miller: Thank you very much.

The Chair: Mr. Hardeman, did you have anything?

Mr. Hardeman: I just thank you for your presentation. It's been expressed by others: The reason that we have standard closing hours is not so much how long we can drink, it's that if you can drink longer in different

places, or if people move from place to place as they drink, there is much more risk of drinking and driving.

Mr. Miller: Yes. That's why we came before the committee, just to put our concerns on the record.

Mr. Hardeman: And we very much appreciate that. Thank you.

The Chair: Thank you, gentlemen. We appreciate you being here today.

Committee, I'd just like to remind you that the interim report will be available next week. Our research officer is working on it now. I'd like to thank all of our witnesses, members and the committee staff for their participation in these hearings.

This committee now stands adjourned until 4 p.m. on Monday, May 8, 2006.

The committee adjourned at 1751.

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Monday 8 May 2006

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Lundi 8 mai 2006

**Standing committee on
general government**

**Stronger City of Toronto
for a Stronger Ontario Act, 2006**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 8 May 2006

Lundi 8 mai 2006

*The committee met at 1602 in room 151.*STRONGER CITY OF TORONTO
FOR A STRONGER ONTARIO ACT, 2006LOI DE 2006 CRÉANT
UN TORONTO PLUS FORT
POUR UN ONTARIO PLUS FORT

Consideration of Bill 53, An Act to revise the City of Toronto Acts, 1997 (Nos. 1 and 2), to amend certain public Acts in relation to municipal powers and to repeal certain private Acts relating to the City of Toronto /
Projet de loi 53, Loi révisant les lois de 1997 Nos 1 et 2 sur la cité de Toronto, modifiant certaines lois d'intérêt public en ce qui concerne les pouvoirs municipaux et abrogeant certaines lois d'intérêt privé se rapportant à la cité de Toronto.

FAIR VOTE CANADA

The Chair (Mrs. Linda Jeffrey): Good afternoon. The standing committee on general government is called to order. We're here today to continue consideration of Bill 53, the Stronger City of Toronto for a Stronger Ontario Act, 2006. I'd like to remind the members that at the next meeting, on May 10, we will discuss a deadline for amendments. The clause-by-clause starts on May 15.

One of the groups that is on our list today has already cancelled—the group at 4:30, the Canadian Council of Grocery Distributors—so we have one less group.

I'd like to welcome all of our witnesses and remind you you'll have 15 minutes to make your presentation. Our first group today is the Toronto municipal campaign for Fair Vote Canada. You may come forward. Welcome. If I could just remind you, you have 15 minutes; if you could identify yourselves, if you're both going to be speaking, and the group you speak for. Once you've done that, you'll have 15 minutes. If you leave some time at the end, we'll be able to ask some questions about your deputation.

Mr. John Deverell: Thank you. I'm John Deverell, a retired Toronto Star journalist and a long-time resident of Toronto. This is Stuart Parker, who's a former resident of British Columbia, now a resident of Toronto and pursuing post-graduate studies at the University of Toronto. We are both directors of Fair Vote Canada, which is the

organization which speaks for the national movement for electoral reform.

Today, we're giving you two documents. The first, with the red maple leaf on it and so on, is our brief to the Governing Toronto Advisory Panel last fall. That was a brief which was completely ignored in the recommendations of the advisory panel. The other document is the text from which Stuart and I will be working today. But it's a long day, and rather than read it entirely, we'll try to hit the high points and leave more time for your questions.

First, we'd like to commend this Legislature for understanding that substantial changes are needed in the governance of Toronto and for proposing major amendments to the City of Toronto Act. Clearly, it shouldn't be acceptable to any of us that Toronto's mayor and councillors have become Canada's most visible professional beggars. There is a fiscal imbalance in Toronto—no doubt of that—but we think there's also an ongoing crisis of governance and accountability in this megacity which Toronto chooses not to acknowledge. Toronto politicians seem to find it easier to campaign against senior governments than to propose difficult choices for Toronto.

Candidates for mayor may try to put forward visions and choices for the city, but what can this amount to, really? There's every likelihood, in the electoral system Toronto has, that the political program of a winning mayor will not correspond with a majority of supportive councillors. You could imagine that the appropriate civic motto for Toronto would be "Toronto: The City Where the Buck Never Stops."

This is a major reason, we suggest, why most Torontonians don't bother to vote in civic elections. They understand, however intuitively, that their role in civic government is not really that of citizens; they are subjects. We think the new City of Toronto Act should at least make it possible for Torontonians, by petition and citizen assembly and referendum, to change the established rules which foster civic apathy and to bring about a democratic voting reform to encourage better government and active and responsible citizenship in this city.

We recognize that this Ontario Legislature is a leader in its willingness to trust the public to understand its own best interest in matters of voting systems. We again congratulate you and your colleagues for convening an Ontario citizens' assembly. We think you should make it legally possible for a similar and historic democratic exercise to take place in Toronto civic government.

With that, I'd like to turn to Stuart, who will deal with the wording of the act and some description of the problems of the current voting system.

Mr. Stuart Parker: Our focus here is subsection 135(3), paragraphs 3 and 4. Subsection 135(3) states that the mayor shall be elected by the single-member plurality voting system. Councillors, according to section 135, paragraph 4, can be elected the same way. In other words, the mayor would be elected city-wide by the same voting system we use to elect members of the Legislature at present, colloquially known as first-past-the-post. We urge you to make these sections dealing with the selection of mayor and council more permissive and flexible so as to permit a thorough redesign of Toronto civic representation and government.

First-past-the-post, or the single-member ward system, often provides very poor representation of the public in a complex, multicultural society such as ours. In the 2003 Toronto election, 40% of the votes cast went to candidates who were not elected. In all, 252,055 voters lost their vote and are not represented by a person of their choice on council. It's as if their ballots were sent to Michigan along with the garbage. Such institutionalized futility is unnecessary. If we wish to continue calling ourselves a democracy, we need to make each citizen's vote count equally and effectively.

Last time, in Toronto, four councillors were elected with fewer than 5,000 votes each, whereas nine candidates who got more than 5,000 votes were defeated. One councillor was elected with 3,462 votes, while there was a defeated candidate who received 7,522—more than twice the lowball winner. To give you an idea in percentages, we had candidates losing with 47% of the vote and winning with 26% of the vote.

Among the negative effects of first-past-the-post elections are reduced voter turnout, especially among members of marginalized groups, and the underrepresentation of women and minorities. A quick glance at Toronto city council shows turnout as low as 14% in some wards, and there's frequent media commentary about the whiteness of council. It's thus quite apparent that the absence of formal political parties at city hall in no way mitigates the failings of first-past-the-post that we see at the federal and provincial levels.

We note with interest, and feel encouraged, that the province has chosen to follow the Toronto Board of Trade and empower the city, for the first time, to choose among more than one method of electing councillors. Section 135(3), paragraph 4, permits the city to elect councillors under the first-past-the-post system or through the multi-member plurality voting system, known colloquially as the at-large system.

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Unfortunately, as demonstrated in academic studies, however, at-large voting typically does not reduce but rather magnifies the problems associated with first-past-the-post, including the under-representation or outright exclusion of ideological minorities, cultural minorities and women. We urge you not to limit the choice in

section 135(3)4 to between two quite deficient systems, especially when the proposed alternative is more likely to magnify than solve the problems with the current system.

We hasten to clarify that Fair Vote Canada does not favour Queen's Park or Toronto city council dictating which voting system Torontonians should choose. We favour fair voting and proportional representation, but we think that which brand of fair voting should be up to the local electorate.

As matters stand, however, the Governing Toronto Advisory Panel, quite contrary to its own rhetoric, has asked you to impose, to etch in stone, the current voting system. On the one hand saying Toronto should have the power to redefine all kinds of things about itself, curiously it has recommended that the Legislature make sure at the local level that people don't have the power to select their own voting system. Instead, it chooses to institutionalize first-past-the-post because of concerns over low voter turnout, effectively thereby institutionalizing the low voter turnout itself.

We therefore congratulate this Legislature on taking the advice of the Toronto Board of Trade and ignoring the panel in etching the first-past-the-post system in stone. We hope that you accord the city the flexibility needed to pick a made-in-Toronto solution to problems with the voting system.

There are many models of proportional representation that should be on the table for serious consideration of Toronto's civic government problems. While some, and probably the most high-profile, fair voting systems feature party lists and party-based accountability, such as in Germany, Sweden, Scotland and New Zealand, this is not a requirement of all proportional systems.

The single transferable vote system with its multi-member districts, recommended by the BC Citizens' Assembly on Electoral Reform and supported by over 57% of British Columbians in a subsequent referendum last year, allows for independents and in no way mandates a party system. It is likely, therefore, if Torontonians were to choose STV, they would create several multi-member wards rather than a gigantic, single multi-member ward. This is how STV is used in most jurisdictions where it is in effect.

Of course, STV isn't the only option. There are at least three other kinds of proportional voting that do not require parties and do not favour parties.

Why should PR matter, though, if there aren't any parties?

It has become the norm for most cultural, ethnic, religious and ideological groups to be geographically dispersed through our city. This diffusion is one of the most powerful positive forces, giving rise to social integration and the era of the great cities in which we live. Many important forms of community transcend neighbourhood. In fact, this is what motivates people often to move to large cities, yet Toronto's single-member districts create an undue emphasis on neighbourhood over all other forms of community.

Mr. Deverell: Now, if you did make these sections to which we refer more permissive, what would it mean to leave the door open to voting reform in Toronto?

Once Queen's Park amends the proposed City of Toronto Act to permit full choice in democratic voting reform, it will be up to Toronto citizens to pursue the opportunity. We expect they will take note of the workings of your independent Ontario citizens' assembly and, once it has discharged its task, which will be next year, Toronto citizens will start thinking about petitioning city council to authorize and create a Toronto citizens' assembly to review the entire municipal electoral system. We think Toronto, like Ontario, will need a fair-minded and representative citizen body, which is not rooted in the status quo and which is solely dedicated to a vitally important task.

As in the Ontario reform process, it will be essential to submit the assembly's recommendations directly to the Toronto electorate for decision by referendum. The legitimacy and success of the entire exercise—and we're not talking about a referendum for every public question; we're talking about a referendum for the one question of the voting system, which is the one where all citizens have the same interest—depends on the acknowledgment by all legislators at the city and the province that voting systems must belong to the citizens. I say you're a long way there already.

It would be a great shame, on the other hand, if Torontonians who are striving and hoping for fair voting and better municipal government were stymied by provincial legislation which stops them from addressing the city's profound electoral dysfunction.

That is our submission. We thank you for the opportunity to discuss the new City of Toronto Act. The appendix there indicates some more language changes that would be necessary to accommodate the flexibility we're suggesting. We would now welcome your questions.

The Chair: You haven't left a lot of time, but each party can have a minute, beginning with Mr. Hardeman.

Mr. Ernie Hardeman (Oxford): Thank you very much for your presentation, particularly as it relates to the voting process. One of the real challenges we've been hearing from a lot of people is functionality of the present system and where they go from here. My understanding from the bill is in fact that it doesn't deal with new ways of voting and new ways of putting council in place that the people get to decide on, but it will be something that city council decides and, if they don't decide, the province will impose it under this bill. So I commend you for your presentation and hope the government takes to heart that more direction is needed in that area than what the bill presently has.

Mr. Parker: Our concern is that the bill gives the government one of two options: the multi-member plurality voting system and the single-member plurality voting system. Very little language would need to change in the bill to widen those options. We're simply suggesting that the door should be open a few feet instead of a crack.

Mr. Peter Tabuns (Toronto-Danforth): Thank you for the presentation. While you were speaking, I took a

look at some of your background notes here. You have commentary here on strong mayor systems, and I would appreciate it if you would elaborate on your earlier comments.

Mr. Deverell: I'll take it with some trepidation, because Fair Vote Canada is a very broad, multi-partisan alliance and we don't deal with specific institutional questions and we don't espouse a simple model. What we can say about the strong mayor system, I think, is that anything which strongly devalues the role of the councillor is something that should be of great concern, but we couple that with our concern for the way the councillors are chosen. You've really got to get both things right. If you want councillors to have influence, you have to make sure that they're democratically selected as well. We can see coherence arising out of strong mayor, but we're not so sure we can see democracy arising out of it. We'd like to see another path.

Mr. Parker: The other concern I would raise is, the reason strong mayor is being talked about is that at present the mayor is the only person who is being elected city-wide. I think the reason there's a desire to concentrate additional power in the hands of the mayor is that all the other members of council are elected in small geographic constituencies. The more flexibility you allow for councillors to be elected in large constituencies or city-wide, the less necessary it will be to vest all power dealing with city-wide interests in a single office. You'll note that we also point you towards some scholarship for which we have citations on the effects of strong mayor in American cities, and I would also recommend you look at the effects of direct election of Prime Ministers in parliamentary systems, particularly in Israel.

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Mr. Kevin Daniel Flynn (Oakville): I really did appreciate the supportive nature you brought to the presentation on some of the initiatives that are taking place. We have a process in place at the provincial level now where we're going to examine our own system, and we know what that is now: We're going to have a citizens' assembly. They will do their work over a period of nine months, decide on something or maybe decide on nothing, and if there is something, it will be put to the people of Ontario. I think there are a lot of people who are excited about this. It's hard to be excited without showing any favouritism to the system that you might prefer, but the process is the exciting thing.

How do you see the process that you're asking us for? How would it differ from the process that would take place were this legislation to pass as is in the city of Toronto?

Mr. Parker: The problem is that if there were to be any kind of process of choosing amongst a wide variety of voting systems, additional amendments to the City of Toronto Act would have to be made at a later point to permit that. We're concerned that what we'd like to see is a City of Toronto Act flexible enough that if a citizens' assembly and referendum or some other democratic consultative route were taken in Toronto, it could be

taken in Toronto without reference back to Queen's Park. If we were to try and have a citizens' assembly in Toronto, under the City of Toronto Act as written, all the citizens' assembly would be able to review is whether council would be elected under the at-large system or the ward system. It would not be able to review the breadth of options that the provincial citizens' assembly is allowed to review. I think we're getting ahead of ourselves to even describe the process. What we want to do is make some little changes to permit the process.

The Chair: Thank you, gentlemen. We appreciate your being here today.

FEDERATION OF RENTAL-HOUSING PROVIDERS OF ONTARIO

The Chair: Our next delegation is the Federation of Rental-housing Providers of Ontario. Welcome. You'll have 15 minutes, after you've introduced yourself and the organization you speak for. Should you leave any time at the end we'll be able to ask some questions.

Ms. Megan Harris: Good afternoon. First of all I'd like to say thank you, Madam Chair and members of the committee, for allowing us to speak this afternoon on this very important piece of legislation, Bill 53. Allow me to introduce myself. My name is Megan Harris. I'm the director of policy and communications with the Federation of Rental-housing Providers of Ontario.

As some of you might know, we're an industry organization representing multi-residential property owners, managers, renters and investors across the province. We're the largest association in Ontario that represents those who own, manage, bill and finance residential properties. Our membership base is quite diverse. It includes those who own just a few units and those who own many. In addition, our membership base also includes our colleagues and partners in industry, including the service providers, suppliers and industry consultants. We represent over 250,000 households, providing a full spectrum across the province. I put that context into place to say that when we speak on these issues, we represent not just the smaller landlords but the much larger ones as well.

Today I'd like to speak to three specific areas within the proposed Bill 53 that are of concern to the industry. The first deals with licensing of the rental housing industry, the second, conversions and demolitions, and the third, the fees and charges.

We absolutely support the need for conferring additional authority to the city of Toronto in order to improve its governance and to strengthen its overall business and investment climate. However, we feel that these three areas, as the legislation currently sits, may undermine the long-term ability of the city of Toronto to ensure continued investment in the affordable housing sector. These proposed sweeping powers that the bill confers on the city could change substantially the provincial and legislative landscape and unwittingly impede Ontario's future competitiveness and investment climate by undermining the long-term supply of rental housing here in the GTA.

On the issue of licensing, we recommend that the licensing of rental housing providers remain a provincial responsibility and not be downloaded to the city of Toronto. The current language in the bill must be strengthened to ensure that licensing and regulation of rental housing remain a provincial responsibility, and the Minister of Municipal Affairs and Housing should maintain the status quo and preclude municipalities from licensing the rental housing industry.

We're also concerned, should the responsibilities be downloaded to the city level, that it will lead to duplication and uneven regulation and enforcement. As a consequence, this will be inefficient, it will be wasteful and it will create significant problems for end users, who will become uncertain as to who is regulating them and which set of rules apply.

Finally, on the issue of fees in this area, if the responsibilities are conferred to the city, we expect that it will likely levy fees in order to defray the additional cost of administering this new scheme. These fees will ultimately be borne by tenants, who already face a grossly unfair and regressive property tax scheme in most municipalities, and the GTA is absolutely no exception. This will add yet another fee which will be borne by tenants. This essentially translates into a cash offering to the city of Toronto on the backs of tenants.

It's our feeling that licensing is unnecessary, as the industry is already highly regulated. A municipal licensing scheme will not add significant benefits for renters or for the industry, as municipalities already have a great deal of authority to deal with property standards issues and very strong powers to deal with property standards enforcement. These powers are augmented through the Tenant Protection Act and the proposed new RTA. Further, when coupled with other legislation such as the Building Code Act and the Fire Protection and Prevention Act in addition to others, it's really not clear to us—

The Chair: If you could move away from the microphone—

Ms. Harris: Is that the problem? Someone should have told me sooner. Thanks.

So when we look at that, it's really difficult for us to understand how this licensing scheme would help to improve this industry.

FRPO, as an organization, has very stringent rules on our membership and performance standards. So we feel, moving forward, that it's best to leave the system as it is rather than devolving the powers in this area to another level of government.

The second issue of concern for us relates to demolitions and conversions. Our industry is concerned that prohibiting and regulating the conversions and demolitions of rental housing will, over time, substantially undermine the long-term supply of rental housing across the GTA. The premise for placing these restrictions on conversions is misinformed and counterproductive. Essentially, by granting this power to the city, the province has given the city of Toronto greater powers to ex-

appropriate the property rights of rental housing owners, unlike any other industry. Overwhelmingly, the evidence suggests that rather than limit conversions and demolitions, the province should consider encouraging more of them.

The essence of those in defence, those who propose that we should limit demolitions, is that it will reduce the supply of rental housing in the marketplace, and this is simply not the case.

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What the evidence clearly shows is that when you add additional housing to the marketplace, those who can afford to buy generally move into a position of ownership, as we see in this current marketplace that we have now. The consequence is that you remove the downward pressure on the existing stock and open up that which was previously rented to another class of renters who previously were not able to form independent households in the marketplace because that group had essentially blocked their entry into the marketplace.

It's time for us to move forward in terms of developing housing policy that's based on the premise of empirical evidence. A number of landmark studies in the US have clearly demonstrated that when conversions take place, as I've just explained, they are a source of additional supply into the marketplace rather than taking away housing from the marketplace.

Furthermore, the assumptions are often based on using CMHC data. Now, CMHC data basically captures—I'll just refer to this here: "Total rental supply counted by CMHC accounts for only a small portion of new rental supply in recent years, since CMHC's rental supply numbers represent only a small portion of rental units which are offered to the market. Estimates produced by Clayton Research Associates suggest that between 1986 and 1996, traditional rental housing supply as measured by the CMHC accounts for only 27% of the additional private... rental housing supplied to the market." And there you list other factors that are not considered, such as the conversion of ownership housing to rental housing, single detached houses that move from ownership to rental and single detached homes that become duplexes, just to name a few. As you can see, there's a full list of them here, and of course the addition of condominiums to the marketplace, where there are often investors who purchase the property for the purpose of renting.

We strongly believe that prohibiting the conversion of existing property is also counter-intuitive to some of the policies stated by the province in its Places to Grow strategy because permitting redevelopment facilitates an increase in the supply of housing in the municipality and it does promote affordability. Furthermore, intensification supports numerous government-stated strategies. It generally results in an efficient use of public infrastructure, including transit, and shorter commute times to work, which of course save energy. It also acts as a check against sprawl, which consumes land and requires longer trips, and it promotes sustainable development and supports thriving and efficient urban areas. So these policies which prevent this intensification work against all these

goals for well-planned communities and regions are just not in the public interest.

Excuse me. How much time do I have?

The Chair: About four minutes.

Ms. Harris: I'll just then move on to fees and taxes. Essentially the existing multi-residential property tax base is already unfair to tenants, who pay nearly four times higher rates than residential tax rates for their rents. Bill 53 proposes to confer additional powers onto the city, and it is imperative that we clarify whether or not the renters will now be subject to additional taxes. For example, could there be a mortgage registration tax or land-transfer taxes and other such costs? It's not clear to us how this will benefit renters in the city. Thank you.

The Chair: You've left about a minute for each party to ask a question, beginning with Mr. Tabuns.

Mr. Tabuns: Thank you for the presentation.

In the early 1970s I lived in a townhouse complex that was going to be converted to condominiums, and I and the other 500 people were given eviction notices. Most of us couldn't afford to buy the condos, so families were thrown into crisis. At the time, I can't say that we felt that our rights and the stability of our households were being protected. So why don't you want the city of Toronto to have the power to protect people from being thrown out en masse in a condo conversion?

Ms. Harris: Well, under the Tenant Protection Act, as you know, existing tenants do have a right in terms of they're offered the right of first refusal and they are also assisted with finding alternative housing. This was not in place in the 1970s, so it's hardly fair to say that's an equal comparison.

Mr. Tabuns: Well, I can say that most of the people who lived there didn't have the money to buy.

Ms. Harris: That was the 1970s, I believe, but we're talking 2006. The legislation today is considerably different and it does protect tenants.

The Chair: Mr. Lalonde.

Mr. Jean-Marc Lalonde (Glengarry—Prescott—Russell): Thank you for your presentation.

I was reading under "Demolitions and conversions" that you were concerned about the City of Toronto Act, which would give "greater powers to expropriate the property rights." I feel just the opposite way, because at the present time a city cannot proceed with the expropriation without a valid reason. Usually it's for the extension of a road, but we know that the city will have a responsibility to meet the social housing need. If they feel they need to expropriate a development or a section of the city to build social housing, then they would probably have the power. But the private sector doesn't have the power to expropriate at the present time. Only the city has the power.

Ms. Harris: That's precisely our concern. By giving this authority to the city to basically deny those who own a piece of property where a residential building currently sits, you're basically denying them the right to use that property in a manner that they see fit. As I also refer to in a section here—I didn't speak to it but it's here—recently the city of Toronto itself recognized that, over time, a

building deteriorates and there's an issue of safety to those that inhabit it. As a consequence, with the Don Mount Court, for example, they determined that it was better to demolish that building rather than incur the major structural costs of over \$100,000 per unit. So based on the current legislation, private landlords would be denied that right as well, whereas the city of Toronto was able to make a valid decision based on the current state of that building and what would be required to bring it into today's standards.

Mr. Lalonde: To my knowledge, at the present time—

The Chair: Mr. Lalonde, I'm sorry, you are out of time.

Ms. Harris: So yes, in fact it is expropriating the right of the landlord.

The Chair: Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation.

I just wanted to quickly go to the extra cost, and I think we've heard that from a lot of deputants about the ability to tax in order to meet the shortfall of the new city of Toronto. We all recognize that we need legislation to govern Toronto maybe in a different way than the rest of the province, and the ability to tax is specified as very limited, but the implied is much larger in the act. I was interested to hear you talk about some of the things that may apply to rental accommodations that, really, one wouldn't think would affect the tenants in the buildings, but we recognize that all added costs will eventually end up on the rental bill. Then I was reminded that we were told by the minister that in fact we have faith in the city of Toronto. They would not tax things that were going to be very detrimental to the city and to the people in the city. Then I was wondering when you mentioned the high tax rate, in fact charging four times as much taxes on rental than on ownership, who made that decision to charge four times as much for rental units?

Ms. Harris: Well, the city of Toronto—

Mr. Hardeman: Thank you.

The Chair: It's a trick question.

Ms. Harris: Well, essentially at the city of Toronto the decision-making around budgetary items often sees a cost, a fee or a charge for delivering a service as a justification for additional charging to those who use these services in a disproportionate manner. For renters it is the city of Toronto that is really driving.

The Chair: Thank you, Ms. Harris. We appreciate your being here today.

As was stated earlier, our 4:30 appointment has cancelled.

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TORONTO AND YORK REGION LABOUR COUNCIL

The Chair: Our next delegation is the Toronto and York Region Labour Council. Mr. Cartwright, you're up just in the nick of time. Welcome. I'm sure you've heard

my preamble before. If you could introduce yourself and the organization you speak for, and you'll have 15 minutes. Should you use all that time, we won't be able to ask questions, but if you don't, we'll be able to ask you about your delegation. We have your handout.

Mr. John Cartwright: Thank you very much. My name is John Cartwright. I'm the president of the Toronto and York Region Labour Council. The labour council represents 195,000 working women and men in every sector of our economy in Toronto and York region.

We're here today to talk about Bill 53, the City of Toronto Act. We also have accountability back to our members who live in York region, which, as people are very well aware, is the fastest-growing region in this country and will soon be larger than either the province of Saskatchewan or Manitoba. So when we talk about the city of Toronto being the largest city in the country and the centre of Canada's largest urban region, it's not just with a Toronto-centric perspective; it's from the point of view of understanding the immense responsibilities that are in front of large orders of government.

First of all we do want to congratulate the government for taking the initiative around the City of Toronto Act and the ongoing question of the new deal for cities. We were involved in the C5 process, with the mayors of five key hub cities across this country talking about the need for a new deal for our large urban regions with both senior governments, provincial and federal, and have been involved, as we said in the introduction, since the imposition of the megacity, and long before, in fact, on the nature of our city. We do want to congratulate the minister particularly for the hard work he's done, and the staff of the province for the work they've done with the city staff and for the open dialogue that has taken place around this issue.

We come at this with the point of view that the new deal is much bigger than Bill 53. In fact, the new deal for our cities has to become bigger than the straight municipal governance and finance issues, although the responsibility of this committee is Bill 53. For us, we need to see a new deal that incorporates enhanced powers for the city of Toronto in ensuring accountability to its population, not only for finances directly, for the city of Toronto's budget, but also for the relationships that are important for Canada's largest urban centre. That includes finances for our schools, for instance. The very foundation of a decent society is laid in our classrooms from junior kindergarten on, and, we might want to remind the new Prime Minister, in our child care centres, as the city of Toronto is the largest provider of child care of any organization in this country outside of the province of Quebec.

The new deal for the cities has to include a particular view of the role of public transit. We're often reminded that there are more people who just take the Queen Street streetcar every day in Toronto than engage in public transit in almost all the rest of this country outside of Vancouver and Montreal.

In those terms, what are some of the issues in Bill 53 that we want to comment on? In our handout we've

provided you with six principles that we looked at around this ongoing discussion of the new deal for cities. We have also provided you with a document that was created by the labour council along with a number of very committed community organizations who are concerned about the future of the city of Toronto. In that document we talk about the city of Toronto needing three things: the power to build the city that Torontonians want, the resources to do the job, and a government accountable to all people and communities. I'll touch on those three elements in my presentation.

Clearly, most of what Bill 53 is about is the power to build the city, and by and large we're satisfied with the bill.

But it's really clear that the second issue, the resources to do the job, is not being addressed here. We want to make it fundamentally clear to this committee that you can't have a city that is still being bankrupted because other people, other levels of government, either provincial or federal, continue to heap bills on them, whether those bills are the cost of social services that were down-loaded by the Harris government or the requirement to pay for transit that people need in order not to have grid-lock that this government has yet to restore—the traditional funding formula for public transit—or the tremendous responsibility of housing costs that really should be borne by the province and the federal government that are now hanging like an albatross around the neck of the city of Toronto. Those are really crucial elements. We can design the best possible process of city council to make its decisions and the best possible framework within which it can make those decisions, but if there's not the money to do the job, it will be sorely lacking.

The third piece is a government accountable to all people and communities. One of the issues we've been most engaged in is this drive by some folks on Bay Street, some very powerful people on Bay Street, and some folks within Queen's Park to say that the city of Toronto needs to have a more mature and accountable form of governance. We would actually say that we have to be very careful here. There's been lots of talk in these last few years about the democratic deficit, about how people look at governments and don't see them being responsible to their real needs, about how decisions are made in backrooms or further back rooms. We fundamentally disagree with the stated interest of a number of very powerful and influential people that there needs to be a super-executive that would actually make the key decisions around our city's operations before those issues come before the elected city council. Even though the act does not impose that, and we've been very clear in suggesting to the provincial government that it would be completely inappropriate for them to impose a governance form, there is the kind of open vacuum in the act that waits to see how happy this government is with what city council determines and then will perhaps overrule, perhaps impose—it's not clear. We would of course warn that if anybody did take that opportunity to impose something, then they'd be stuck with the results, and all

of the shortcomings and the mess that would end up happening as a result of just how politics naturally happens would be at their feet rather than at the feet of city council.

So we would hope that the provincial government would respect the right of city council to determine its form of government and ensure that in those neighbourhoods where people are not wealthy, where people are newcomers, in those neighbourhoods that are identified in the United Way report recently amongst pockets of poverty in *A Decade of Decline*, there is a way of engaging those people so that it's not just the purview of wealthy and influential homeowners or the purview of the board of trade and those people on Bay Street to actually decide what happens in the city of Toronto. We have to ensure that every newcomer family that comes here to make a better life for themselves has political space and is able to be part of shaping the future of this city.

Let me talk about a couple of very specific things in the bill, and some of these are a response to presentations made by others in front of you. We notice with dismay that the hotel tax is particularly removed from the powers of the city. That's ironic, because Glen Murray used to come here and talk about the difference of a mayor coming to his city from Houston, I believe it was, to Winnipeg. When he went down there, he actually paid money through all of the different fees into the coffers of the city of Houston. When the mayor of Houston came to Winnipeg, the citizens of Winnipeg subsidized all of those things because there weren't things like hotel taxes. It's kind of crazy. The hotel industry has chosen to take a certain room levy, but the public has no control over how that's used, and we saw that recently over the question of the Live 8 concerts. So the hotel tax should be one of the instruments that the city can have; it should not be waived.

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We've heard from some of the homebuilders their concern about the design provision issues. Let me tell you, I'm a builder. I'm a carpenter by trade. For years I headed up the building construction trades council in this city, the largest such council in this country, one of the largest in North America, representing the most competitive construction workforce, the mostly highly skilled construction workforce in this country and probably North America. We couldn't understand why the builders some years ago lobbied like crazy to remove some of the environmental considerations that were previously in the building code, things like full-height basement insulation. They went nuts to remove that stuff from the building code—very short-sighted, not understanding the savings that this would provide to homeowners in the long term, not understanding the health effects around mould and so on.

I would urge you not to give in to some of the Chicken Little syndromes of certain people who have come in front of you, saying, "Don't give the city power to talk about stronger environmental standards or better building

code considerations.” These are all part of the kind of society that we need to build together.

There is one thing, though, that I want to talk about with a lot of disappointment. The issue of democratic deficit that I talked to you about also includes when people get to go to the polls. I think the question of a four-year term should be in front of this committee and it should be debated. There has been no input, there’s certainly no call from the general public, to extend municipal terms from three years to four years. I’ve never heard it, and I’ve been involved in this discussion day in and day out, month in and month out, for the last 10 years. I don’t know where it came from. Some city politicians would love to have four years; some would love to have eight- or 10-year terms. “Sixteen more years,” I think is a chant I heard recently from some of them.

But let’s get real. There has been no call from the public to extend that, and yet the government of the day has sought to surreptitiously slip it in under that budget. I think that’s wrong. I think this committee should ask that it be removed from the budget process, be brought back as a separate item where you do have hearings in front of this committee, and if in your wisdom you decide to recommend a four-year term, at least the public has a chance to comment on it, not having been slipped it. It almost leaves a bad taste in our mouths when in fact so much in this bill is to be welcomed. To have that coming in surreptitiously is really wrong. It’s shocking and it’s unacceptable.

Those are my comments. I’d be happy to answer any questions. Of course I hope that people would take the time to read the background documents that I provided.

The Chair: Thank you. Mr. Duguid, do you have some comments?

Mr. Brad Duguid (Scarborough Centre): Yes. How much time do we have?

The Chair: Everybody’s got about a minute.

Mr. Duguid: I want to start off by telling you that I appreciate your being here and I appreciate your comments on the design standards. Really it’s the green roofs that we’re talking about. We’re not talking about giving the city their own building code, but in the area of green roofs it’s really the one area where they’ll have some specific capability. I appreciate your reassuring comments because I think you’re right. I think there’s been a reaction to that that’s probably greater than the actual impact will be in the end and I think everybody will adjust to it.

In terms of where do we go from here and the fiscal challenge, I think we all agree that this act in and of itself is not going to solve all of Toronto’s fiscal problems, but I think we’ve come a long way, if you look at the capital funding for public transit now and if you look at the operating funding that’s being provided through the gas tax. And the last budget announced the subway expansion. If you look at what’s going to the city of Toronto now, they’re now getting more, if you include the federal contribution, than they’ve ever received, not to say that we don’t want to do more and can’t do more.

This government is a government that’s in the transit business and we’re going to continue to work toward that end.

Land ambulance has been uploaded, public health has been uploaded—

The Chair: Mr. Duguid, are you getting to a question? You’ve run out of time.

Mr. Duguid: I’m more making a comment. I want to thank you for your comments, and certainly I think we’ve still got some ways to go but I think we’re making some really good progress in these areas.

Mr. Cartwright: I’d love to answer his question. I will point out the one area that’s still glaring, and that is the business education tax. There is this inequality of the business education tax still being applied by the province at a much higher level than in the 905 municipalities, and that has to be fixed. The city of Toronto has changed that in order to lessen—actually to dump some of the cost on homeowners and tenants. It’s absolutely imperative that the province fix that inequity.

The Chair: Mr. Hardeman.

Mr. Hardeman: I agree with you to the extent that there are a lot of things that need fixing that are not in this bill, which in my opinion need looking at prior to this bill. I think this is a step in the right direction, but it’s not necessarily moving along the line very fast.

I wanted to ask about the building code. We had some other people presenting—and the parliamentary assistant just mentioned it, that it’s in the architectural design and the green roofs. You implied that there was more in the act that allows the city to do more items related to the building code, such as putting environmental conditions on buildings that are presently not in the building code. There was a lot of concern that they would have a city of Toronto building code. Is that really a concern?

Mr. Cartwright: No, a city of Toronto building code is not in the act; those powers are clearly not there. There are some elements around design issues, which of course, as people have pointed out, is one area that all major cities are now concerned about: the built form and how it looks. I think I was responding to the fact that my good friends in the housing bureau and others will come and say the sky is falling because you’re actually talking about some environmental thinking. They’ve been pretty guilty of some short-sighted thinking on this stuff, and I would urge the committee to understand that background as it gets on with doing that.

The Chair: Mr. Tabuns.

Mr. Tabuns: I actually don’t have a question, John. I appreciate the presentation. You made a lot of good points.

The Chair: Thank you for being here today. We appreciate your time.

YONGE-BLOOR-BAY BUSINESS ASSOCIATION

The Chair: Our next delegation is Mr. Douglas Jure, of the Yonge-Bloor-Bay Business Association. Welcome.

Mr. Douglas Jure: Good afternoon, Madam Chair.

The Chair: You know the drill. You introduce yourself and your organization, and if you're both going to speak, could you both identify yourselves for Hansard? You have 15 minutes.

Mr. Jure: My name is Doug Jure, and I am a vice-president of the Yonge-Bloor-Bay Business Association. With me today is Bob Saunderson, who is a director of our association, the immediate past chair of the Bloor-Yorkville Business Improvement Area and the chair of the Bloor Street transformation project.

Bill 53 recognizes the city of Toronto as a responsible, accountable government, and proposes giving the city certain legislative powers necessary for its government to carry out its responsibilities. Our association supports this bill for no other reason than that the Ontario government has acknowledged that the city must have authority to deal expeditiously with local, neighbourhood, economic and lifestyle issues affecting commercial and residential properties.

This afternoon, we'd like to comment on the three elements of good governance—accountability, taxes and partnership—and propose an amendment to the bill affecting the finances of business improvement areas, which we refer to as BIAs.

First, accountability: With Bill 53's increased powers comes accountability. Our association has long complained that the existing governance model allows city councillors and staff to dodge responsibilities, and hence accountability. Finally, this will change.

Many are concerned that city council will raise revenues by taxing alcoholic drinks and theatre tickets. Should city council decide to implement those taxation measures, it will be held accountable. Our members will point out just who increased the cost of a pint of Guinness at the Duke of York or a ticket for *Mission: Impossible III* at the Varsity Cinemas.

Taxes: Mayor David Miller, when he appeared before this committee, stated that the new revenue powers alone will not resolve the city's long-term structural fiscal imbalance. We agree. We welcomed city council's approval of a long-term economic development plan that addresses disparities among various property classes, but it is not enough. The city must be able to create or modify property classes to protect our local neighbourhood commercial communities from being destroyed by excessive and punitive realty tax burdens.

Our association has repeatedly advocated the creation of a neighbourhood commercial property class; the mayor referred to it as a small retail class when he appeared before you. This property class would encompass two- to three-storey street-front buildings that comprise downtown shopping areas throughout Ontario. The tax rate applied to this class would be affordable, between 2% and 3%.

Further, to relieve the pressure on the city's property tax system, the principal source of revenue for the city, the Ontario government must eventually consider reversing the downloaded social services. Let's remember that the property tax system is intended to pay for police, fire

and emergency response services, parks and recreational facilities, garbage collection, parking enforcement, and pothole- and sinkhole-free roads.

1700

Partnership: Like many communities, our infrastructure is not in a good state of repair. Our BIA has launched the Bloor Street transformation project, a \$30-million private-public infrastructure improvement partnership that will make over Bloor Street—the one kilometre between the Royal Ontario Museum and Church Street—into one of the world's great shopping avenues.

The Bloor Street transformation project started in 1998, after comparing Bloor Street to other world-class shopping districts in Europe and North America. Bloor Street lacks the greenery and shopping ambiance of those shopping districts, and major infrastructure improvements to the underground services and the streetscape are necessary for the revitalization of the Yorkville retail district.

Yorkville is home to international retailers: Chanel, Tiffany, Gucci, Armani, Prada and Escada. They recognize that Bloor Street is Canada's premier retail address, yet the street itself does not reflect this fact. It is, for the most part, a characterless traffic corridor with narrower than average sidewalks, dying trees and an assortment of ill-placed and unsightly vendors.

Although Bloor Street has one of the highest pedestrian counts in the city, it has gradually been given over to cars and trucks at the expense of pedestrians. At Yonge and Bloor, for example, 700 to 1,000 pedestrians have been counted crossing each leg of the intersection each hour during the winter months; summer use is even higher. The sidewalks are inadequate for the volume.

Bloor Street will be transformed into a more gracious and animated pedestrian domain, anchoring and strongly reflecting the soon-to-be-reinvigorated cultural environment made possible by the expansions of the Royal Ontario Museum, the Gardiner Museum and the Royal Conservatory of Music. Our project will construct, plant and install widened granite sidewalks, trees, special street lighting, street furniture, raised planting beds with shrubs and flowers, pedestrian walkways, parking lay-bys and public art.

By renewing Bloor Street's infrastructure, the project will achieve two critical economic objectives: First, it will revitalize Toronto's major retail district; and second, it will contribute to building Toronto's leisure tourism market.

Through the creation of the Bloor Street transformation business improvement area, the Bloor Street business community, through its BIA levy, will be contributing \$20 million to the project. This is an illustrative partnership between local government and local business.

To further strengthen our BIAs and promote partnerships across Ontario, we recommend an amendment to this bill that addresses the problem of BIA levy hold-backs caused by long-standing commercial assessment appeals. Over the last five years, the city of Toronto has held back a total of \$900,000 worth of levies from the

Bloor-Yorkville BIA and \$1.1 million from the downtown Yonge BIA in the event that assessment appeals in their areas are successful. The argument is that if the appeal is successful, the BIA levy is lower and a refund is due to the property owner. From our perspective, and that of Ontario's largest BIA, downtown Yonge, the withheld monies are an unnecessary programming cutback. Further, the amount of a BIA levy involved in each property's assessment appeal is minor. Therefore, we propose that the assessment used to determine a BIA levy in any year be considered final.

Bill 53 indicates that Municipal Act provisions on BIA levies will continue to be in effect within Toronto. Therefore, our proposed amendment is positioned as an insert into the Municipal Act or, should the committee prefer that the amendment be limited to Toronto rather than applying province-wide, section 208 of the Municipal Act would be inserted into the City of Toronto Act with the proposed amendment included, while the Municipal Act itself remains as it is.

We propose that subsection 208(2) of the Municipal Act be amended by inserting "or" at the end of clause (b), with a new clause (c) added as follows:

"(c) by levy upon rateable property in the improvement area that is in a prescribed business property class, with the assessed value of each property in the improvement area deemed final and not subject to change after the date on which the municipality's by-law providing for the special charge is enacted."

If the committee recommends the new clause (c) for the city of Toronto only, the following, which I have presented in our written submission, would be added to the end of subsection 423(2) in Bill 53 on page 274. You can read it in our submission.

In conclusion, the Yonge-Bloor-Bay Business Association supports Bill 53. We have submitted to you an amendment to this bill that will resolve a long-standing practice by the city that is penalizing the good and vital work of BIAs. We encourage the government to take the next step in addressing the undue pressures on our property tax system by uploading social service programs that should not have been downloaded in the first place. Thank you.

The Chair: You've left about two minutes for each party to ask a question, beginning with Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. Just quickly on the BIA levy: The fact that they withhold it—is it provincial legislation that obligates them to do that?

Mr. Bob Saunderson: No, I don't think so. This is a city position. They are worried about tax appeals.

Mr. Hardeman: It just seems to me that that would be the very reason the bill is here. If the city of Toronto can't make decisions about whether they withhold or don't withhold a BIA levy, that the province has to tell them to do that, it kind of takes away from the real reason for the bill, which is to give local power to the city of Toronto and their ability to handle the functions of the

city. Why wouldn't local government be able to handle BIA levies?

Mr. Saunderson: They are quite minimal compared to the assessment. The assessed value in our neighbourhood is approaching \$2 billion, and a BIA levy, for instance, is 0.0008 of that \$2 billion. You'd think they could work—you know.

Mr. Hardeman: The other issue I wanted to touch on, that you talked about, was the small business taxation class. Is it your understanding that the city, presently or in the bill, cannot set property classes?

Mr. Jure: It can't.

Mr. Hardeman: Okay. Thank you.

Mr. Tabuns: Thanks for the presentation. I did have a chance to read it. A question on the BIA levy: Have you discussed your proposed amendment with TABIA, and do the other BIAs back you? Secondly, have you discussed it with the city of Toronto, and do they have any difficulty with the amendment?

Mr. Saunderson: Do you want to do TABIA, and I'll do the city?

Mr. Jure: Sure. TABIA: Yes, we have. The two biggest BIAs are Bloor-Yorkville and downtown Yonge, and of course we're the ones who have the biggest holdbacks. So yes, we have.

Mr. Tabuns: And TABIA is supportive of this?

Mr. Jure: It's inside, yes.

Mr. Tabuns: Great.

Mr. Saunderson: We've discussed it with the city, but they've taken a position that if someone wins a tax appeal, then these funds have to be available. What happens now is that they hold the money. I'd at least like to get the interest into our account, but that's not possible either.

To give you a better idea, if someone won a reduction of \$100 million in their assessment, the reduction in the BIA levy would be \$80,000. They're already sitting on \$900,000, so it's not something that is practical to do. The increase in the assessment in our neighbourhood between 2003 and 2006 was \$600 million. So our assessments continue to rise. Eighty thousand dollars is not a lot of money, but it is to us. It's not within the tax system, but within our organization it's a lot of money.

Mr. Tabuns: How would the city be protected, should you have a business come after them for the refund of that?

Mr. Jure: We're only saying that the BIA portion of the levy is final. The rest is theirs. We're just taking out the levy—

Mr. Tabuns: In other words, the city would be protected by the change in legislation.

Mr. Jure: Yes.

The Chair: Mr. Duguid.

Mr. Duguid: Just briefly, Madam Chair—I don't believe I have to take the whole two minutes.

The Chair: You actually have three, so if you want to share it with somebody, you can.

Mr. Duguid: I want to thank the two gentlemen for taking the time to put this together and for their support

on this piece of legislation. It's important to hear the voices of our Toronto business community, which is becoming more and more progressive, I think, in particular as this legislation has come forward—a very important voice that is essential for us to be able to get the public to completely understand the importance of giving Toronto autonomy and alternative sources of revenue and, I guess, putting our trust in the people of Toronto that they'll handle these alternative sources of revenue and autonomy responsibly.

You talked about the Bloor-Yorkville business improvement area as being the top retail area in the country or, I guess, in the province. As the MPP for Scarborough Centre, which has the Kennedy Road Business Association, I might beg to differ a little bit on that. You might be a little more prestigious, but Kennedy Road is certainly right up there with you as well.

1710

I want to thank you for your input. We'll certainly take a look at this amendment. I don't know if I understand all the implications of it but we'll take a look at it and see if it's something that can be supported.

Mr. Jure: The importance is that if you're promoting partnership between the private sector, as we're doing with the Bloor Street transformation project, the city has got to release those funds. We'll be contributing another \$100,000 this year to that holdback. It's in the best interests of the property owners to have a dynamic marketing program, for instance, and a beautification program which increases the value of their properties. It gets caught in a vicious circle, and I think we'd rather have that money, which is their contribution, spent, and spent currently to address current issues.

The Chair: Thank you very much for your thoughtful presentation.

Is Mr. Phil Capone here today? He isn't. Okay. Our next delegation is not here.

ENVIRONMENT AND ECONOMY COALITION

The Chair: The following one is the Environment and Economy Coalition. Mr. Rosenberg, welcome. You'll have 15 minutes, and if you leave us time at the end, we'll be able to ask you questions.

Mr. Michael Rosenberg: I'm Michael Rosenberg, representing the Environment and Economy Coalition. We helped organize a number of workshops on urban planning over the last few years and we also attend many city meetings related to the environment and urban planning. I submitted 25 copies of this two-page statement. Is it available?

The Chair: Yes, we have them.

Mr. Rosenberg: The province has set out on this path of setting forth new powers to the city in an effort to set out an area of jurisdiction for the city and to simplify matters by giving the city its own powers within its own areas of geography as much as possible. On the other hand, the mayor and many city councillors have a

different idea of what the purpose of these changes is. They like the idea of seeing themselves as high-level policy-makers and they want to set up a particular form of government that would tend to separate policy from implementation, which tends to make it much harder for people who want to get involved to really suggest ideas, because ideas don't really separate between policy and implementation in practice.

Instead, an alternative is to find a different organizing principle to prepare these changes in city government, and that is that the city should be focusing on management of its city operations, which are large and involve many practical details, especially, for example, in the works department as well as social services and so on. This management requires that we don't go in the direction that the mayor and some of the councillors want to go in. It's not a good idea to separate policy and implementation in order to improve the management of the city.

On the other hand, the province is really the body that should be making laws; that is, telling people what they should do and not do. That should not primarily be the responsibility of the city. The city does of course make many bylaws, but most of the bylaws that the city makes in effect amount to implementation of the city's indirect ownership rights. In other words, planning is kind of viewed as a form of public ownership over some of the rights of a property. As long as it's understood that way, then it can be understood in terms of how much right should the public have versus the private landowner, and you can come to a reasonable conclusion. But if you see it instead as the city having general law-making powers, then things could get out of hand. There would be much less of a sense of the rights of the citizen. Those kinds of lawmaking powers are better handled at a higher level of government, such as the province or federally, where laws can be considered as such, which is really different at those levels of government than the way bylaws are considered.

The city, in order to improve itself, really needs to improve management. I don't think they need to be given huge additional powers in terms of the ability to make laws. The more they get the impression that they can tell citizens what to do, the less the city government actually feels the need to do things properly themselves. When the city does tell people what to do, which of course it does and will continue to do, it should be done in the context of what is the proper level of collective powers and ownership; how can the laws that the city makes for its citizens actually help to ensure that the city management process actually works? Rather than just saying that it's a good idea for the city to have many more powers, we should be saying that the city only needs powers to a certain extent. What it really needs is an improvement in its management system.

The idea of the governance report that the city put out is that you can separate policy from implementation. This is based on the idea that if the city sets forward a number of grand themes and visions, that constitutes management, and that's really all the politicians have to do, and

then the staff can go and implement it. At a level of government like the city, which is actually involved in running things and not just making laws, that kind of approach won't work. Again and again people have to go to city committees and talk about implementation. It's necessary that the politicians be involved in implementation, not just in setting policy, because that's where the problems always arise and that's where people have to go to the politicians and ask them to make motions and decisions that cross the lines of policy and implementation.

So the general approach of trying to separate staff from politicians or setting up an executive committee is definitely not going to improve the management of the city of Toronto. In fact, the reverse is needed. Politicians need to have more time, and probably more of their own office staff, so that they can become more connected with staff and become more involved in implementation as well as policy.

In summary, any changes that are made to the governance of the city of Toronto should not remove the government from the people. We don't need an executive committee, which means that fewer councillors will be involved in certain decisions and that less information will leak out to the public. We don't need politicians thinking that they want to save their own time by being less involved in overseeing implementation. They may find the time and effort required to do their jobs difficult, but the public needs to work that way, and if the politicians find it difficult, that's not a reason for changing it. Their job is to do their job, not to find some way to simply say, "Let decisions be made by staff."

1720

Although the structure of municipal government should be left up to the city, the province should not be setting a tone which would imply moving toward an executive committee or a strong mayor or anything of that sort. Although I would not be upset if the province ruled out an executive committee, I think it should be left to the city to decide, but I certainly don't think we need to have the province reserving the right to require an executive committee, because that suggests that the province thinks that maybe it's a good idea. I certainly wouldn't see any reason to do that. At the very least, it should be left strictly up to the city.

Finally, while there may be some reasons to increase the city's right to make certain bylaws, I don't see the city primarily as a law-making body and certainly would not like to move in the direction of certain types of administrative fines and that kind of thing or bylaw-making power in areas that would normally be provincial jurisdiction. Thank you.

The Chair: You've left about a minute and a half for each party to ask questions, beginning with Mr. Tabuns.

Mr. Tabuns: I would say, Michael, that you've been pretty clear and straightforward, so I don't have many questions. But I do want to say that I agree: I'm concerned about the development of an executive system on Toronto city council. I think it would be problematic for

the city, and certainly problematic for voters, who would feel that their ability to influence direction of the city would be reduced by an executive group that would mean, frankly, from the cost of running an election in the city of Toronto, that a very small number of people would have access to that executive committee. It would substantially reduce the impact of people of non-substantial means.

The Chair: Did you want to comment on that?

Mr. Rosenberg: The executive committee will make it harder for one of the best parts of the current system to work, which is that any councillor can find something that isn't really going in the right direction and start to get the other councillors onside to do something about that. It would become much harder under an executive committee system for that to happen.

Mr. Tabuns: I agree.

The Chair: Mr. Duguid.

Mr. Duguid: I was trying to follow your line of logic. It seemed to me that you felt there was no need to provide the city with much additional authority or responsibility or powers, but only a need to improve their management system. When I look at some of the things we're trying to look at, by just improving their management system, how would they then get more control over things like architectural design, protection of heritage, protection of rental housing, the ability to delegate and improve their decision-making process or to designate certain areas as community improvement areas or to control licensing? I think these are important areas of authority that a city the size of Toronto should have. I'm trying to understand. Do you not agree with that?

Mr. Rosenberg: I think there could be some incremental increases in those powers, but the city can already do several of the things you mentioned. I'm more concerned about whether they have the right process for working with the community to exercise those powers properly. I'm not objecting to some increase in powers as long as it's done in the right framework.

Mr. Duguid: Have you ever sat through a city of Toronto budget process?

Mr. Rosenberg: Several times.

Mr. Duguid: I feel for you. When you see that, does that not tell you that there's some need for more of a centralized budget process that involves all members of council but shows a greater vision and compliance with their strategic plan?

Mr. Rosenberg: It mostly shows me the opposite, which is that the ideas coming out of the central offices, such as the city manager and the mayor, tend to be trying to focus things in a certain direction which is not all that helpful. The more the other councillors get involved and have something to say about it, the more they improve the direction of the budget.

Mr. Duguid: Or create a hodgepodge of pet projects that they spend hours debating.

Mr. Rosenberg: I would prefer that they have more involvement in strategic issues rather than just pet projects, but cutting them out altogether isn't going to help the situation.

Mr. Hardeman: Thank you very much for your presentation. I was quite taken with the position, somewhat contrary to a lot of the presenters so far: When we talk about the act, they talk about the extra powers, the greater authority and the greater ability to run their own affairs that city council will have. We haven't heard much presentation about whether this improves the ability for the citizens of Toronto to actually be involved in that decision-making process, whether this bill furthers the benefits to our citizens as opposed to just the benefits to government.

One of the things of course that everyone has said, both the citizens and the government together, is that the size of council and almost the parochialism of council doesn't work very well because everybody is looking after their local citizens or their local needs. We just don't seem to have anybody there collectively to come up with decisions on the bigger picture for the whole city. That's where of course the executive council idea comes from. I wonder if you have given any thought to or have any comments on that executive council not just being some of the members of council appointed by the head of council but in fact an elected executive committee. Some municipalities—I think there are still two in the province—have what they call a board of control, where the local ward councillors get elected to represent their wards and then there is a group of people—and the one I'm thinking of is one of my neighbours, which has five members of the board of control—the mayor and four other members directed city-wide. Would that solve some of your concerns about the executive committee?

Mr. Rosenberg: I don't see a small number as an advantage. If you wanted to say that certain councillors had responsibility for the whole city and certain councillors had responsibility for wards, I'd still like to see at least 25 councillors representing the whole city. Unless you have a reasonable number of people involved in the city-wide decisions, there is not enough debate. The main thing I'm concerned about is that a small number of people get some bright idea which is really bad and the structure of the system makes it hard to even discuss what's wrong with it.

The Chair: Thank you very much. We appreciate your being here today.

Is Mr. Capone here in the audience? He missed his opportunity to speak if he's not here.

WHISTLER'S GRILLE

The Chair: Our last delegation is Whistler's Grille. Mr. Mastoras—have I pronounced that right?

Mr. Steve Mastoras: Mastoras.

The Chair: Sorry. Welcome. We're glad you're here. We've saved the best for last. You have 15 minutes, and should you leave time at the end, we'll be able to ask you questions.

Mr. Mastoras: Thank you very much, Madam Chair. I'd be delighted to take up the 15 minutes in addition to my time if that's okay with you. No, I'm just kidding.

The Chair: Nice try.

Mr. Mastoras: Good afternoon. My name is Steve Mastoras. My family and I own and operate Whistler's Grille, a small business, a neighbourhood restaurant-bar located at 995 Broadview Avenue at Pottery Road in Toronto. We employ 30 people and have been in business at this location for 25 years. I should also let you know that I served as a city councillor for six years, from 1985 to 1991, so I think I have some understanding of the challenges faced by both the city and the city's hospitality industry.

I understand that I'm also one of the last presenters on this bill. In fact, I'm thus far the only independent business operator to have the chance to make a deputation, which is a bit of an oversight on the committee's part, but I appreciate the opportunity nonetheless to be here with you today.

1730

I'm before you to speak to a specific provision of Bill 53 which would allow the city to levy a direct retail sales tax on the purchase of liquor. I, like many of my colleagues in the hospitality industry, many of whom were hoping to be here with me today, am opposed to this provision. I would respectfully recommend that this committee take its one and only opportunity during clause-by-clause consideration of the bill to remove the liquor tax provision.

I know that you've already heard from the Ontario Restaurant, Hotel and Motel Association, who informed this committee of the dire situation faced by the industry and the negative impact a new liquor tax would have on our industry. I want to provide you with a small-business perspective.

The substantial majority of Ontario's hospitality industry is independently owned and operated. Whistler's Grille is a family-owned restaurant established in 1981. I'm here today with members of my family, representing three generations in this business, directly to my right. Very few restaurants survive for 25 years, and I've seen neighbouring establishments come and go over the years, trying and often failing to make ends meet.

Whistler's is located in the East York community, not in the downtown core. It is important to remember that there are over 4,000 licensed establishments in the city of Toronto. So when we talk about the city's hospitality industry, it's crucial that we talk about the independent restaurants throughout the whole city, not just downtown, not the entertainment district and certainly not hotels—4,000 small businesses and a correspondingly substantial number of employees.

Whistler's, like many small businesses in the industry, is part of the social fabric of the community we serve: neighbourhood dining, small corporate functions, weddings and other family events, sports club events; those and many others are our bread and butter. It is a daily challenge to continue to keep our customers happy, meet the payroll and satisfy employee expectations, all the while facing increasing operating costs and incredible pressure on already slim margins.

We have struggled, in our industry and as small businesses, with consecutive annual increases to minimum wage, dramatic increases to utility costs, higher property taxes, higher rent, increasing WSIB costs, increasing benefit costs and higher and more user fees. There really is no room for an increase in our selling prices. Our customers are fed up, and more and more they are cocooning rather than going out for something to eat and drink. We, like many similar small businesses, would have to absorb most, if not all, of the costs of any additional tax or live with substantially reduced sales, and many businesses will not be able to take another hit.

We are the little guys, 4,000 of us in Toronto. We aren't just a statistic. We are real people with families, with employees who have families, all trying to make ends meet and faced with an onslaught of challenges. We were all hurt badly by SARS, the loss of an NHL season, the blackout, and more recent challenges include such things as mad cow and potentially a bird flu pandemic. All of these were and are avoidable external factors and we continue to recover. We're also faced with increasing energy costs and a higher Canadian dollar, with no reprieve in sight, but you will know that an additional liquor tax is completely avoidable.

The government's proposal to grant the city the authority to impose a new liquor tax will put a fourth tax line on our customers' bills. That's if some or all of these 4,000 businesses pass the tax along to the customer as opposed to just absorbing it. This proposal will result in more customers choosing to stay home, opting to purchase less. People simply aren't able or interested in paying more taxes. This will be disastrous for most of these 4,000 businesses, and I genuinely fear the impact on Whistler's and our staff.

What the new tax will not do, however, is address the city's financial situation. As a former councillor I can tell you that there are a great many tools and resources, such as governance changes, procedural changes and program review, that would assist the city in meeting its challenges. But rather than forcing or even assisting the city in making some tough decisions and changing the way it works, the government is simply handing over revenue-generating tools that will not affect the long-term outlook of the city. With revenues this year of \$7.6 billion, more than \$1 billion higher than just two years ago, the city does not have a funding problem. Regrettably, our city has a spending problem. The consequences of beefing up the city's taxing authority will not be a pretty sight in this business. I can assure you of that.

This liquor tax provision doesn't begin to improve the city's financial standing, nor address their long-term economic problems, but a fourth tax line on a customer's bill will have disastrous impacts for small businesses in the hospitality industry and operators like myself and my family. The liquor tax provision targets small business in the hospitality industry. There is no other way to look at it. Is that really what you want to do? If so, why? And have you considered the impact? Has anyone actually sat down and tried to answer these three very simple

questions? We need to give our collective heads a shake here. No other industry is primarily independently owned and operated, primarily small business. No other industry is as directly impacted by this bill.

I've heard municipal officials say they would be judicious in the use of the new proposed tools, but this isn't about the folks at city hall today. This isn't even necessarily about the folks who will be there in November. This is about small businesses in an industry in Ontario and in Toronto that is struggling and needs the provincial and municipal governments to enact policies to help sustain these businesses, not hurt them. We need you to genuinely reflect on this, to come to the aid of small businesses in our hospitality industry. We need you to do the right thing here. We have been reeling from the effects of a series of unavoidable external events and can't take another body blow. We need you to remove the proposed power of the city to impose a new liquor tax.

I'd be happy to answer any questions.

The Chair: You've left about two minutes for each party. Mr. Duguid, did you want to begin?

Mr. Duguid: Mr. Mastoras, thank you very much for joining us here today. Congratulations on your business of 25 years, as you were saying earlier. I've been there. It's a great place to go for lunch or dinner or for a few drinks. I commend it to everybody here, all members of the committee.

Mr. Mastoras: Thank you.

Mr. Duguid: I've heard a number of concerns raised by the restaurant industry and I understand where they're coming from with regard to the potential of the city somewhere down the road deciding to impose some kind of alcohol tax. But I haven't heard a lot from the industry on the recent federal budget, which I understand also brought in some form of an alcohol tax. I'm wondering if the industry plans to voice any concerns about the federal budget and the alcohol tax there, considering that what we're talking about here is not an actual tax; it's the possibility that down the road, hypothetically, the city may decide to go in that direction, even though the mayor here indicated that he has no such plans. Maybe you could comment on that a little bit.

1740

Mr. Mastoras: I'd be delighted to. The federal budget decision is a recent one that took place last week. It's certainly news to our industry, and I'm sure that the Canadian Restaurant and Foodservice Association will actively express its concern on behalf of the industry across the country.

With respect to this specific piece of legislation and your comments with regard to what the mayor has perhaps intimated to you, I can tell you he has told me personally that he has absolutely no intention of establishing a tax on alcohol. These are words that came from him as recently as a month ago when I spoke to him directly.

"Then why do you need that authority; why are you pushing for that in this act?" would be my question to the

mayor. If it's not a priority for you, then let's get it removed. I can tell you that it is clear, with the current dynamic on our city council—the apparent desperate need to find new sources of revenue—that it may very well not be the mayor's call when things get down to business in the next budget. I can tell you that our industry is very, very concerned about that. As much as I respect Mayor Miller and his commitment to me personally, I don't necessarily feel it's the position that many of the members of council are going to take.

Mr. Hardeman: Thank you very much for the presentation. On that same topic, I too heard the mayor say it was not in his plans to put a tax on. I would suggest that your first suggestion at the start of your presentation was to just remove that from the bill. So far, we haven't heard anyone come forward who wouldn't agree with that; no one has said they needed it or were going to use it. So I don't know why it would be there, and I would agree with you on just removing it.

I have one other problem with the same thing. If the intent is just to raise revenue, maybe you could tell me why you would suggest that, instead of the province just giving a percentage of the tax or even increasing the present tax the province puts on it—why they wouldn't just do that and give the money to municipalities, recognizing that any new tax has to be collected by and delivered to the province, not to the city, and the province passes it on. Can you see any reason why you need another line item on your bill as opposed to just varying that tax, the provincial tax on it?

Mr. Mastoras: That's an excellent question. As you know, the provincial sales tax on liquor is not 8%; it's 10%. Presumably, those funds go into general revenue at the provincial level and are disbursed as they see fit as a government, whatever the government of the day may be.

In terms of earmarking for the city something affiliated to an increased potential liquor tax, I think that would be a mistake too, quite frankly. Our industry has been decimated by a number of factors. Any increase over and above that already high 10% could be devastating to small businesses that are out there. If the provincial government wants to take its existing revenues associated with liquor taxation and somehow redirect those funds to the municipality, I'm sure they're welcome to do so and they have the jurisdiction to do that, but to increase it in any way, shape or form could have a devastating effect.

In fact, you've seen very recently that the government of the day has taken a great initiative in eliminating the

gallage fee from our liquor purchases. That's a very commendable move that I know the industry has been lobbying in favour of for many, many years. In spite of previous governments and the kind of co-operation we thought we had, this government made that decision, and it's a tremendous help to our industry.

Mr. Tabuns: Mr. Mastoras, thank you for the presentation. One of the concerns people have is the financial viability of the city of Toronto. Do you support the province taking back the costs that it downloaded to the city of Toronto as a way of helping it balance its books?

Mr. Mastoras: I very much appreciate the question, and I thank you, as my MPP, for indulging in the issue with me.

The downloading that took effect under previous governments is something that I suspect we're going to have to deal with as a provincial community for a long time to come. What we're dealing with here today, I believe, is a comprehensive and very constructive piece of legislation that has been well thought out in many, many respects, but on the specific issue of taxation on alcohol, I think a serious mistake has been made, and the consequences can be devastating to our industry, which has thousands of small businesses.

In relation to the other element of your question, on the city of Toronto's financial viability, I can tell you, as a small business owner and someone who is very active in our community, that I have grave concerns about many of the actions that have been taken, which have essentially expanded the operating budget of the city by \$1.3 billion. How is that sustainable in the longer term? There are people out there saying that the city is going to be bankrupt in a few years. Is that the way we want to present ourselves as a new city, an amalgamated city? We were supposed to see savings when consolidation and amalgamation took place, and in fact we've seen a significant reverse as a result of some seriously questionable decisions that have been taken by this council and its predecessors.

The Chair: Thank you for your eloquent presentation. We appreciate your being here today.

This brings to a close our hearings for today. I'd like to thank all of our witnesses, our members and our committee staff for their participation in the hearings. This committee now stands adjourned until 4 p.m. on Wednesday, May 10, 2006.

The committee adjourned at 1746.

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Wednesday 10 May 2006

Journal des débats (Hansard)

Mercredi 10 mai 2006

Standing committee on general government

Stronger City of Toronto
for a Stronger Ontario Act, 2006

Comité permanent des affaires gouvernementales

Loi de 2006 créant
un Toronto plus fort
pour un Ontario plus fort



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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 10 May 2006

Mercredi 10 mai 2006

The committee met at 1606 in room 228.

I'll just tell the committee that our 4:45 has cancelled, so we have one fewer delegation to hear this afternoon.

STRONGER CITY OF TORONTO
FOR A STRONGER ONTARIO ACT, 2006LOI DE 2006 CRÉANT
UN TORONTO PLUS FORT
POUR UN ONTARIO PLUS FORT

Consideration of Bill 53, An Act to revise the City of Toronto Acts, 1997 (Nos. 1 and 2), to amend certain public Acts in relation to municipal powers and to repeal certain private Acts relating to the City of Toronto / Projet de loi 53, Loi révisant les lois de 1997 Nos 1 et 2 sur la cité de Toronto, modifiant certaines lois d'intérêt public en ce qui concerne les pouvoirs municipaux et abrogeant certaines lois d'intérêt privé se rapportant à la cité de Toronto.

The Chair (Mrs. Linda Jeffrey): Good afternoon. The standing committee on general government is called to order. We're here today to continue consideration of Bill 53, the Stronger City of Toronto for a Stronger Ontario Act, 2006.

We have one item of committee business to consider before hearing from our first witness. The committee will start clause-by-clause consideration of Bill 53 on Monday, May 15. We need to consider a deadline for the committee clerk.

Mr. Brad Duguid (Scarborough Centre): I'll move noon on Friday as the deadline.

The Chair: Any discussion on that?

Mr. Peter Tabuns (Toronto-Danforth): That means that noon on Friday is the last date, the last point for submitting changes, amendments or new language?

The Chair: I'll get the clerk to clarify for you.

The Clerk of the Committee (Ms. Susan Sourial): It's an administrative deadline. The bill is not time-allocated, so even during clause-by-clause, if there are other amendments to be tabled, they can be. It's for the purpose of getting a package out to the members so they can see some of the amendments that are available.

Mr. Tabuns: Thank you. I appreciate that.

Mr. Duguid: It gives us time, Peter, to review what amendments you've put forward at that point and also to make sure that you guys have our amendments.

Mr. Tabuns: Brad, I appreciate that.

The Chair: So we're agreed? All right, noon on Friday will be the deadline.

GREATER TORONTO
APARTMENT ASSOCIATION

The Chair: I'd like to welcome all of our witnesses. Mr. Butt, I gather you're our first witness, from the Greater Toronto Apartment Association. Welcome, Mr. Butt. You have 15 minutes. Should you use all of your time, we won't be able to ask questions. Could you introduce yourself and the organization you speak for?

Mr. Brad Butt: Thank you very much, Madam Chair and members of the committee. I am Brad Butt. I'm the president and CEO of the Greater Toronto Apartment Association, which is a business association that represents more than 240 companies that own and operate in excess of 160,000 rental apartment units across the greater Toronto area. Our membership consists of more than two thirds of all the privately owned rental apartment buildings in the greater Toronto area. We'd like to thank the committee for the opportunity to comment on Bill 53 and to share with you what we believe will be the impact of this legislation on the provision of decent, affordable rental housing in the city of Toronto.

We understand that there are some areas where municipalities should have additional powers to improve the lives of their citizens and make the business climate more positive for growth and investment. We also believe that Toronto needs to get its governance act together, and if Bill 53 paves the way to make that happen and ensure that Toronto runs better, then we would certainly have no objection. However, much of what we read in the bill causes us to have more rather than fewer concerns. In fact, we seriously question what the impact on rental housing in particular will be. I'd like to share with you some of the areas where our concerns lie.

Regulation: One would assume that with the tabling of the new Residential Tenancies Act last week by Minister Gerretsen, the province has clearly indicated it will occupy the field as it relates to the landlord and tenant relationship. The bill indicates that issues around rent control, rent increases and the eviction process will remain an area of provincial responsibility.

However, Bill 53 speaks to "broad" permissive "powers" for the City of Toronto. One would naturally have concerns that this could include the city occupying

this area. We would recommend that the bill be amended with strong language that clearly indicates that the city cannot set up parallel regimes to provincial ones where it believes it may have an interest. Such action by the city of Toronto would significantly undermine the provincial statute governing rental housing.

Licensing: Section 119 of the bill indicates that the minister may exempt any business from licensing. While this is positive, it is not strong enough in ensuring that the city will not have the power to license apartment properties. Once again, as the province has indicated through the proposed Residential Tenancies Act, it has occupied the field of the landlord and tenant relationship. The city of Toronto should not have the authority to implement a licensing regime for rental housing, and the bill should be amended to state that clearly.

Fees, charges and taxes: The city of Toronto already has a tax rate for the multi-residential property tax class that is nearly four times higher than the residential tax rate. Tenants in Toronto have been overpaying property taxes through their rent for decades. This policy is directly responsible for the rent levels in this city. Now, under Bill 53, the city will have the ability to implement all kinds of additional fees and charges, which are really new taxes on a property tax class that is already overpaying. The bill should be amended to ensure that the city may not in any way increase the tax burden on the multi-residential property tax class. There should be no new fees or charges permitted that would result in rent increases for our tenants.

Section 262 of the bill, while spelling out some 13 areas where the city may not impose a tax, still provides considerable latitude for the city to create new taxes that are not specifically prohibited. Could there be a land transfer tax? Could there be a mortgage registration tax? Could there be a tax on leases? Could there be a rent surtax on tenants? These are questions that need clear answers before this bill is passed.

Demolition and conversion of rental housing: Section 111 of the bill speaks to the issue of demolition and conversion to condominium status of rental housing. It essentially eliminates any opportunity for redevelopment or intensification of existing apartment sites and perpetuates the high property tax burden on rental housing by prohibiting conversion to condominium status. We would argue that this totally flies in the face of this government's own Places to Grow initiative and does not allow for renewed compact development in key areas of Toronto. Giving the city of Toronto absolute power to set the rules in this area means no new development or redevelopment opportunities on apartment sites, period, and that is not good smart-growth policy.

City governance: Finally, I'd like to briefly address the issue of governance at the city of Toronto. I spend a lot of time at Toronto city hall—I'm sure Mr. Duguid will remind you of that—on behalf of our members. I participate actively in meetings with council and staff, and I think I have a pretty good handle on what goes on at city hall. I can tell you unequivocally that the system is

broken and dysfunctional. The rules of procedure are regularly abused, the committee system is not user-friendly and, quite frankly, the size of the council is too large. There is nothing in Bill 53 that would improve this situation other than hoping future councils will do it. The so-called strong mayor system may help to make the system streamlined and more efficient, but then it may not. In the end, it is really the members of council who will determine whether Toronto improves or not.

Madam Chair and members of the committee, I thank you again for the opportunity to appear before you. I would ask you to consider amendments to the bill, as I have indicated, to ensure that the province maintains total control over all aspects of the landlord and tenant relationship. A stronger Toronto should not mean a weaker Ontario. Let's make sure Bill 53 ensures that.

The Chair: Thank you. You've left about two minutes for every party to ask a question, beginning with Mr. Hardeman.

Mr. Ernie Hardeman (Oxford): A lot of presenters have come in and agreed with the premise of the bill, which is legislation to allow more autonomy in the governance of the city of Toronto, and almost all of them had some point to make on the taxing and licensing authorities and how far that should go. As I look at yours, you're right. The question of what the bill would allow—you mentioned section 262 of the bill. It would seem to me there's nothing in the bill that would prevent any of those from being opposed, other than that the mayor said he would not impose anything that was detrimental to the citizens of Toronto. But that's a little hard to explain with the property tax on multi-residential properties. In fact, that's very detrimental to the people living in apartments, and yet it was the mayor and city council who, over the years, allowed that distance between residential and multi-residential to be achieved.

I guess I would just like to ask about two very quick points, and maybe you can put them together. One is, if not the ones you mentioned for raising more revenue, what would be your suggestion that should be put in to raise more revenue, or should there be anything? The second one, of course, is, what's your opinion on how the strong-mayor scenario should be implemented, or should it be implemented?

Mr. Butt: I guess the first thing I would say is, as far as our property tax class is concerned, I think tenants in this city already overpay. So to increase the tax burden at all on them simply because Toronto has a budget problem, I think, would be very unfair to the residents who live in my members' apartment buildings. I think there's an expenditure problem, not a revenue problem, at the city of Toronto.

Second, the strong mayor: Quite frankly, I don't think the mayoral system—in fact, there are 44 councillors and a mayor, who has one vote—has worked well, regardless of who the mayor of the city of Toronto is. I think the mayor can be a very strong force to make sure that fairness and equality do take place among a whole myriad of issues this council deals with. All you have to

do is sit in one of those council meetings and hear 44 different opinions and have the mayor try to broker some semblance of order, to know that the system clearly isn't working. So to have whoever the mayor may be—the current one or another one in the future—have some more powers to better reflect issues across the city, I think, is not a bad idea. Exactly how it gets implemented and how we ensure that our sector and the business sector and others who have been before you are not negatively impacted is a very good question that I think needs a lot more thought before this bill is proclaimed.

The Chair: Mr. Tabuns.

Mr. Tabuns: Thank you for your presentation, Mr. Butt. You assume in this section on demolition and conversion of rental housing that any demolition or conversion would result in more intense development. Can you tell me why you think that?

Mr. Butt: The fact of the matter is that I don't think there's a developer in this city that isn't going to propose intense densities on a site. The land economics don't make sense. You're not going to rip down a 50-unit apartment building and build a 20-unit apartment building. You're going to rip down a 40-unit apartment building and build a 300-unit apartment building because it's on the Yonge Street corridor, it's serviced by TTC and it should happen.

The problem is that the history of how the city of Toronto has dealt with condominium conversion and demolition has been that the impediments are so huge that no one would ever do it, which means you never get to your ultimate smart growth plan because no one in their right mind will go forward and redevelop a site when basically the answer from Toronto city council is, "There's no way to do it. We're not accepting your proposal."

1620

Mr. Tabuns: How would you propose to protect tenants who could not afford to move out and who certainly couldn't, in most cases, afford to buy condominium units when there's a condo conversion proposed?

Mr. Butt: Well, if you're familiar with the current Tenant Protection Act, which will be repealed with the new Residential Tenancies Act, you'll be very familiar with the fact that there's very generous compensation to tenants who are affected by a condominium conversion or a demolition application. The landlord is required to do all kinds of things under that piece of legislation, regardless of whether the new development has to go through the planning and rezoning process. There's very generous compensation for condo conversion and demolition for tenants today. I don't believe the new Residential Tenancies Act takes away those gains for tenants affected by those proposals. We haven't really fought that kind of thing.

Our basic concern is that every time you come forward to Toronto city council to put together a proposal for intensification, they raise the bar on the requirements. There's a requirement right now to provide, let's say, three or four months' rent to a tenant to allow them to

relocate, and that's a financial compensation. The city of Toronto just comes back and says, "Well, three or four months is not good enough; we're going to make it seven or eight," and then it's 10 or 12. It makes it economically impossible to redevelop many of the sites in the city that need to have that redevelopment. So our basic concern would be that Bill 53 really gives absolute, total control—beyond the Planning Act, the Municipal Act and the Tenant Protection Act—to the city of Toronto to set whatever rules it wants. I think that's very dangerous territory.

The Chair: Mr. Duguid.

Mr. Duguid: Mr. Butt, thank you for being here today and for all the work you have done, both with the city of Toronto and with us in terms of landlord and tenant relations through the years.

On the second page of your submission, you mention something, and I'll read it: "It is really the members of council that will determine whether Toronto improves or not."

I think we would wholeheartedly agree with that. What this act is meant to do is give those members of council and the people of Toronto the tools they need to build a stronger city. I think the Premier said it well when he said that in many ways it's a miracle Toronto has done as well as it has in operating within the regulatory and fiscal straitjacket they've had to operate within. We've tried, and we're working very hard, to deal with some of the fiscal issues: uploading of costs for transit, both capital and operating; public health; we've invested more in housing; land ambulance; as well as a number of other areas. We've still got more work to do in that area, but what we're trying to do here is give them the ability to compete with other cities their size to build a stronger city.

I just wanted to see if there are any further comments you have on that, as well as further comments perhaps under the regulation aspect of the bill, and maybe get a little more specific as to concerns with regard to the potential for a parallel regime in landlord and tenant issues.

Mr. Butt: I'll start with the first one. I don't mean this in jest, Mr. Duguid, but I assume you ran provincially to get out of city hall because of how dysfunctional the place is, and because you could maybe get a lot more done at Queen's Park than you could ever get done at Toronto city hall.

That being said, when you spend a lot of time down there, you see it. It's not just the personalities; it's not just the 45 members of council who are elected. It's a pervasive attitude that says that the business community is not appreciated, including the business owners I represent, despite the fact that they're providing the bulk of the affordable rental housing in the city. It's an attitude down there that I don't think legislation changes by giving the city more power to do more things against more people; I don't say "for" more people but "against" more people. I don't think that's a good piece of legislation.

I think the province has a role to monitor municipalities in a proper way. I think Bill 53 creates the province of Toronto. I don't think that's what you wanted to do, but the more I read it, I think that's what you've done: You've created the province of Toronto. I don't think that is in the best interests of the people of Ontario or the people of Toronto.

If you want to get into specific areas under regulation, our biggest concern is that the preamble of the bill talks about "broad" permissive "powers." I would not be surprised to see a future city of Toronto council, if Bill 53 is passed in its present format, saying, "We don't like the way the province regulates the landlord and tenant relationship. We have broad, permissive powers to pass bylaws, rules and regulations in an area where we believe the city of Toronto has a vested interest, a special interest." I don't want to spend my members' money for 10 years in court fighting the city of Toronto as to whether or not they can write their own Tenant Protection Act.

That is a serious concern under this bill, and it's not just my piece of legislation. The way this bill is written, they can rewrite the Environmental Protection Act, as far as I'm concerned; they can rewrite aspects of the Planning Act, as far as I'm concerned. There is not strong enough language in this bill that says, "You cannot override any provincial statute." This bill does not say that. You need to amend it to make sure that the city of Toronto cannot occupy any field that is exclusively provincial jurisdiction. I'm not a lawyer, but I can tell you, that is not in this bill and you should amend it and make sure it is in this bill.

The Chair: Thank you very much for being here today.

DIRECT CITY ACTION

The Chair: Our next delegation is Direct City Action. Welcome, Mr. White. We have your handout here. Make yourself comfortable. Could you introduce yourself and the group you speak for, for Hansard? You have 15 minutes. If you leave us some time at the end, we'll be able to ask you questions.

Mr. David White: Thank you, Madam Chair. My name is David White. I am here on behalf of Direct City Action, a citizens' organization that advocates for improved financial and governance arrangements for the city of Toronto.

In the document that is before you, we have set out some recommendations. The first one is that the standing committee recommend that Bill 53 be amended to make it clear that Toronto city council can delegate to a community council any power normally associated with a local government that has full and complete decision-making authority. These powers would include the power to impose a tax, adopt an official plan, pass a zoning bylaw, incorporate a corporation and adopt or amend a municipal budget, among others. The reason we've set out those particular powers, which we believe the city should have power to delegate to a community council, is

that the bill specifically prohibits the council from doing those things.

Our second recommendation is that the standing committee recommend that Bill 53 be amended to remove the power of the Lieutenant Governor in Council to make regulations requiring Toronto city council to establish a governance structure set by the regulation.

I just want to describe what we believe are the major problems with the Toronto mega-city. First of all, it governs too large a geographic area. Many decisions that are made at city council are location-specific, and members of council, because they have to deal with such a large geographic area, cannot be familiar with the locales. As a result, they often defer to the ward councillor, because they can't understand or don't know the location of rezoning applications and other matters that are location-specific. The effect of this is often to turn a ward councillor into what amounts to a ward boss. The city councillor is often not subject to the checks and balances that result from group decision-making which, of course, is the basis of democratic government.

What we believe is the second major problem is that the amount of business council has to deal with is too large. Members can't read all the material they are required to vote on at a council meeting. Again, as a result, they defer to the ward councillor on many matters.

City council itself is too large. The result is that members of council only have five minutes to speak. They might have an extension of that, but the time they have to present or make arguments on a complex issue is often not sufficient. Five minutes is often not sufficient to deal with a major issue.

Some have suggested that the way to deal with this problem is to delegate more powers to the mayor and his hand-picked executive committee. This has turned out to be a very unpopular idea in the city of Toronto. On April 4, the community councils held public meetings at which people were permitted to depute. Altogether, 40 people, representing themselves or organizations, deputed. As far as I can tell, not one supported the idea of a strong mayor and an executive committee that would be picked by the mayor.

1630

The fourth problem of the mega-city is that it tries to embrace different and competing urban cultures, and a single council simply cannot accommodate this diversity. The result is that there is great frustration in many of the communities around Toronto.

The fifth problem we've identified is that Toronto is huge compared to the other municipalities in the GTA. We need to move forward and start coordinating matters among the municipalities of the GTA, but the enormous and disproportionate size of the city of Toronto makes that very difficult to do.

Our group has been arguing with Toronto city council that there should be substantial decentralization. Our first recommendation speaks to the need for a City of Toronto Act that permits decentralization. As I mentioned, such powers would be specifically denied under Bill 53.

For a minute, I just want to run through how decentralization might address the problems I mentioned. The first problem is that city council tries to cover too large a geographic area. If community councils were substantially empowered, then members of council who represent the Etobicoke community wouldn't have to vote on, delve into and understand zoning changes in Scarborough, for example. Members of councils would be able to understand the locale on which they are voting.

As an example, I mentioned to a member in Scarborough, when I was down at a committee arguing for a particular point, the CPR tracks that run about a kilometre north of us here as a boundary. The member from Scarborough didn't know what I was referring to, where any member who represented the old city of Toronto would immediately know what was being referred to. It's a standard boundary that's used in planning matters, and yet this member of city council didn't really know where that CPR line was. That was just one example.

The second issue is that if powers were substantially delegated to community councils, it would mean there would be less for city councillors to read and they would actually be able to read what they vote on, something that doesn't happen now. The community councils could be smaller, and therefore members would have adequate time to present their positions; they wouldn't be restricted to five minutes. Different and competing urban cultures could be addressed by community councils, which would be familiar with and understand those cultures. The fact that city matters are substantially delegated to the community council level would mean that the community councils would embrace populations similar to the other GTA municipalities, such as Mississauga, Markham, Richmond Hill or the others. Those are ways in which decentralization addresses the problems we laid out.

The reason we picked on community councils is that they currently exist and roughly correspond to at least four of the cities that made up the old metropolitan Toronto. In fact, the Scarborough community council corresponds precisely with the old city. What we've also proposed is that the community councils actually lead the discussion with the public about what powers should be delegated to the councils.

At this point, we don't know whether the city of Toronto would actually adopt the idea of decentralization, but we think that if the intent of Bill 53 is actually to give the city of Toronto substantial powers to determine its own destiny, surely its own governance structure should be one of the powers that it assumes.

We will make our arguments to Toronto city council about decentralization. They may or may not agree, but we would like them to at least have the power to agree if they so choose. We're not suggesting that decentralization would resolve all the problems. Certainly, there are major financial problems that beset the city and that do great harm to it, but we think that decentralization is an important step towards addressing the problems.

Finally, I just want to address our second recommendation, which speaks to the power of the Lieutenant

Governor to impose regulations to set the governance structure of the city. Clearly, if the purpose of this bill is to empower the city, that power of the Lieutenant Governor in Council should be removed. The city of Toronto should be able to determine its own structure.

Those are my submissions, Madam Chair.

The Chair: Thank you. You've left about a minute and a half for every party.

Mr. Tabuns, you have the first round.

Mr. Tabuns: David, thanks for the presentation. I appreciate it. Have you had discussions with Toronto city councillors about what you've set out here, and what sort of response have you received?

Mr. White: At this point, just the way the cycle is working, first of all, as you may know, Toronto city council adopted the strong mayor system, which was recommended in what's called the Buller report. However, they adopted it in principle and then set out a whole public consultation process. What came out of that public consultation process, especially when the community councils heard deputations from the public, was that, as I said, of 40 speakers I believe virtually all of them spoke against the strong mayor system.

City council will have this matter before it again for deputations now at the full council level, at the committee of the full council, which is the policy and finance committee, on June 20. I suspect there will be a large number of members of the public down to address it and will be advocating very strongly against the strong mayor system. It remains to be seen, but that's what I suspect is going to happen, given the pattern so far.

Mr. Tabuns: This discussion that you've laid out about decentralizing powers down to the community councils—

The Chair: It has to be a shorter question, please.

Mr. Tabuns: How do they respond to that suggestion?

Mr. White: The interesting thing is they're holding their fire. They're not responding at this point. The community council simply heard the arguments. Some members of council put motions and then it was all referred to the policy and finance committee and, ultimately, to the larger city council. They, in fact, haven't responded. We will find out soon.

Mr. Lou Rinaldi (Northumberland): Thank you for the presentation. Just a question, I guess: When you talk about decentralization with community councils and I look at your number (1), which sort of gives a broader review of what the community council does, it basically has the same powers as an elected municipal council, if I see this right, in a broad range. Do you get any sense that that will be accepted by the public, somebody to have those kinds of powers, like taxation, budgetary measures, without being duly elected by the community?

Mr. White: I'm very confident the public would support that. As I've said, there have been deputations to the community councils, and a large majority of people have recommended exactly that substantial delegation of powers to the community councils. I'll also remind you that some years ago the city held a referendum when the

mega-city was proposed by a previous government, and the citizens of the city voted overwhelmingly against the idea of amalgamation. Based on their deputations that have been given, I believe that the majority of the citizens would in fact see that delegation back to a more local level of government is the right way to go.

Mr. Rinaldi: I have no problem with community councils, and I guess—

The Chair: Mr. Rinaldi, I'm sorry; you don't have any more time. Mr. Hardeman.

1640

Mr. Hardeman: Thank you very much for the presentation. I'm kind of interested in the community council type of governance model that you're suggesting. Recognizing that this is the bill to implement autonomy for the city of Toronto, it appears that the preferred model you're suggesting for governance is not the type of model that the city itself would likely come up with, because they would have to take their own power and give it to others. Human nature is that we believe we could do it better ourselves rather than mandate someone else to do it.

The bill also allows that if the city can't come up with the proper governance model, the province can, by regulation, take over that power and actually impose the type of governance model. From your presentation, I kind of got the idea that that would be the preferred option; that, rather than let the city make that decision now, why not make it right up front and say, "This is the new governance model. Now design where you're going with the governance, to do it properly"? Is that fair, or is that not what I heard?

Mr. White: No, that's not what we're recommending. We think that the power of the Lieutenant Governor in Council to impose a governance structure on the city of Toronto should be removed from Bill 53. We think it should be up to the city of Toronto. Our group has a particular view about decentralization, but we don't want the province to impose that on the city; we want the city to make that decision itself. We want the city to have that power. We'll take our chances with the city councils.

If the city had the power, which it does not in this bill, to empower community councils as what amounts to, as suggested here, municipal levels of government in their own right—we think the city should have that authority, but we'll take our chances in persuading them that they should act on that authority.

Mr. Hardeman: But it seems quite—

The Chair: Thank you, Mr. Hardeman. I'm sorry; we're out of time.

We appreciate you being here today for your deputation.

Mr. White: Thanks very much.

SHARON HOWARTH

KAREN BUCK

The Chair: Our next deputation is Sharon Howarth and Karen Buck. Good afternoon and welcome. We have

your handout. Once you begin, if you could—you'll both be speaking, I presume?

Ms. Sharon Howarth: Yes. I'll be speaking first.

The Chair: If you could say your names for Hansard; you'll have 15 minutes. Should you leave time at the end, we'll be able to ask you questions.

Ms. Howarth: Thank you very much. It's a pleasure being here. Thank you for the opportunity of speaking to you.

The Chair: Could you just move away a little bit from the mike, just a wee bit? Thanks.

Ms. Howarth: Oh, sorry. Is this better?

The Chair: Yes.

Ms. Howarth: The following are my recommendations, which are:

- (1) Decentralization of decision-making;
- (2) Community councils' roles and responsibilities be substantially increased and top-down decision-making rejected;
- (3) Community councils elect their own chair and establish their own committee structure to deal with the substantially increased roles and responsibilities contemplated in recommendation (2).

The Chair: You're still a wee bit too close. They can pick you up really well. You're just a wee bit close.

Ms. Howarth: Too loud?

The Chair: No, just too close to the mike.

Ms. Howarth: Okay.

- (4) Standing committees elect their own chairs;
- (5) Chairs of community councils and standing committees sit on the executive committee;
- (6) Community councils and standing committees elect their chairs at the beginning of the term of council and rotate the chairs every 12 months thereafter;
- (7) Executive committee advances the will of city council as a whole and not just for the mayor;
- (8) City council as a whole appoint the city manager and other senior staff and that senior staff appoint personnel below their level;
- (9) Ward-based representation be retained;
- (10) Three-year term of office also be retained; and
- (11) A forward-thinking advisory group be established to provide crucial analytical support, free from obligation to individual programs, and that this support be available to the mayor and all councillors, i.e., all members of city council.

I'll just go quickly.

(1) Decentralization of decision-making: A better approach for reforming governance in the city of Toronto would be to recognize that the physical area covered by the municipal government is too large. It is virtually impossible for council members to be familiar with addresses, streets and neighbourhoods referred to in many city council reports. Many municipal government decisions are location-specific, but when decision-makers can't visualize a locale, it is hard for them to make a good decision, and since they don't feel fully informed, they often do not engage in debate. Moreover, it is impossible for council members to find the time to read the in-

credible amount they are given—information that is imperative to make an informed decision—and therefore they defer to the ward councillor on the decision.

This de facto delegating of decision-making should be formalized by empowering community councils and decentralizing as much decision-making as possible to them. Community councils should have full and final authority on a wide range of issues, and control of the budgets and staff resources necessary to implement solutions.

Community councils are much more likely to be in tune with local priorities and the local municipal culture than the city council that governs the whole mega-city. Community councils, with the authority to act on the expressed needs of local communities, are much more likely to be able to engage these communities in the political process.

With a centralized approach to decision-making, there is a long-acknowledged understanding among observers of government that concentration of power can easily lead to an abuse of power. Justice Gomery's main theme, which he continuously repeated as head of the federal government's sponsorship scandal inquiry, and his strongest recommendation, was that decision-making powers be removed from the Prime Minister's office, the equivalent of the mayor's office at the municipal level of government.

(2) Community council roles and responsibilities substantially increased and top-down decision-making rejected: The major flaw in Bill 53 is that it assumes that the serious issues that the city of Toronto faces can be best addressed with solutions imposed from above. The province has included a provision in the proposed new City of Toronto Act which would allow it to impose the advisory panel's major recommendations on the city if the city does not enact them itself.

With the advisory panel's recommendations to concentrate powers in the mayor's office, there are a set of mechanisms for imposing top-down solutions on the city. The recommendation to restrict the role of community councils to deliberations only on minor matters, such as speed bumps and stop signs, under the watchful eye of the mayor's appointed chair, can be interpreted as a mechanism to place top-down decision-making in the hands of the mayor and his or her hand-picked associates.

There is a proposal that community councils, though set up to be powerless to respond to suggestions from the public to implement significant change, should be charged with the responsibility of reconnecting city government with communities, and that's completely illogical; they don't mix. It is illogical to suggest that, on the one hand, ratepayer and resident groups are dynamic and care passionately about Toronto but, on the other hand, have too much local democracy in their ability to influence the form of real estate development through their elected city councillors. Suppressing local democracy by removing decisions on matters such as local zoning and the design of local after-school art programs from community councils to city council, in which most

elected city councillors will be marginalized and which will be dominated by the mayor and his or her loyal executive committee, will not help connect city government to communities.

How's my time?

The Chair: Eight minutes.

Ms. Howarth: Left?

The Chair: Yes.

Ms. Howarth: Oh, goodness. I'll just go over the headings again and then I'll give Karen a chance, because you might have questions.

Community councils elect their own chairs and establish their own committee structure to deal with the substantially increased roles and responsibilities contemplated in recommendation 2.

Standing committees elect their own chairs.

Chairs of community councils and standing committees sit on the executive committee.

Community councils and standing committees elect their chairs.

Executive committee advances the will of city council and not just the mayor.

City council appoints city managers and senior staff, but senior staff will hire their own personnel.

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Ward-based representation retained.

Three-year term retained.

And this is very important: A forward-thinking advisory group be established to provide crucial analytical support, free from obligations to individual programs, and this support should be available to the mayor and all councillors, i.e. all members of city council. In order that all members of city council be in an equal position to represent the interests of their constituents and the city as a whole, it is crucial that a forward-thinking advisory group be established and charged with the responsibility of providing invaluable analytical support, free of obligations to individual programs, and this support should be available to the mayor and all councillors, i.e. all members of city council.

The main points in the recommendations, again, would be the decentralization of decision-making, so rejecting top-down decision-making, per Justice Gomery's main recommendations, and the forward-thinking advisory groups to establish analytical support.

Thank you so much. My neighbour, Karen Buck.

Ms. Karen Buck: My name is Karen Buck, and I actually attended the North York meeting where Minister Gerretsen reviewed Bills 53 and 51. It was reassuring for me to know that the city of Toronto was going to present their proposal, and whatever seemed to be a very reasonable governance structure would be something that the Ontario government would in fact consider very seriously. I've also attended all of the governance meetings in the city of Toronto, I think, except one.

I'm here today because I want this transparency to overlap with you, because what the city of Toronto hears you don't get a chance to hear. That's why we're here today, just to say that this is what we've been saying as

the people of Toronto—and you may be getting a repetition here, because that's really how their meetings have gone.

We didn't like the strong mayor approach. There seemed to be a consensus that it would be great to have a strong council approach to governance in Toronto. We've heard many times over the years that the job of a city councillor is impossible to do, that the public leads and the government tends to lag behind and that the city governance process and city decision-making in a lot of cases needs greater transparency and accountability. That's where we're depending on you. When they present their idea for their governance structure, we would like you to look at how accountable this is, how democratic this is and how representative it is for the people who vote them in.

There are two roles that councillors play now and have played for eons of time, and those are, they have a role of leadership and policy-making and decision-making at the local level, and they also have one over the whole of the city of Toronto. I think it's important to understand that there seems to be a bogging down of the local level decision-making. At the meetings I was at—and I even gleaned one of the ideas from the meeting—people seemed to be very supportive of the fact that we have four community councils now, but they wouldn't mind seeing a lot more community councils and more-local decision-making. I think that needs to be a discussion between the city of Toronto and its residents about what those local decision-making responsibilities will be at the local level. Then there's the other huge level, and of course that's all of the city of Toronto and all of the things that affect everybody there.

Sharon has talked a lot about the non-partisan forward-thinking analytical advisory support group. What else can you call it? That's what we want it to do. We want it to be non-partisan, forward-thinking, analytical and advisory, and we want it to support the whole of council so that when they make decisions or are voting, they have a really good idea of what would be good decisions.

I agree that the overall city council should retain the ward-based representation that it has now and that the three-year term of office be kept.

The other thing I want to address very quickly is lobbying. Yes, I think there should be a lobbyist registry, but as a citizen, I've sat on many committees over the years since the late 1980s, and I find that there is a need for private lobbyists and also public lobbyists to get together with their problems and their ideas and come up with solutions. I'm proposing—and this is just something that I've thought of over the years—that wouldn't it be great if staff, politicians and the public could spend a day at city hall and hear lobbyists and their ideas? Many of the things that lobbyists talk about actually could be solutions in which the public, who may have problems with what's going on in their neighbourhoods or things that they need solutions for on governance, would actually see that there's a nice fit. There's always going to be

some fit between the private sector and the public sector, and we have to learn a way of actually bringing these two things together. If we hear each other talking, we'll know which ones fit together. So I would propose that there be a day of lobbying, maybe once a week or once every two weeks. Even at the Ontario level, I think it would be a really good idea. Get these ideas out in the open, so we know where we're going and which ones really do fit, and make the best decisions.

The Chair: You have a minute left. Is there anything you'd like to summarize with, because there isn't enough time for any of us to ask questions?

Ms. Howarth: They're smiling. They like the lobbyists.

Ms. Buck: Just that we like strong council and we like this idea that the responsibility is being spread out over the whole of the representation rather than one person having control over ideas. We want it to be representative.

Ms. Howarth: I'm going to get it wrong, but does anybody remember hearing that a strong mayor does not mean he has all the powers? Do you remember that saying? How did it go?

Ms. Buck: That's right. We heard that.

Ms. Howarth: It doesn't mean that all the powers are there. The strong person is a person who is able to delegate and accept ideas. That's what we're all here for, all those in public offices are there to—I want everybody to be happy and when I give them what they want and let them have what they want, they're happy and they make good decisions. They pay taxes; of course they're good people, and intelligent people.

The Chair: Thank you, ladies, for your passion and enthusiasm. We appreciate your being here today.

JOHN SEWELL

The Chair: Our next delegation is Mr. John Sewell. Good afternoon and welcome.

Mr. John Sewell: Thank you very much. I'm really pleased to be here and have the opportunity to talk to you. I might say that this is a subject I've been interested in for many years. I established a website seven years ago, localgovernment.ca, to talk about stronger local governments. So I've done a lot of writing and thinking about it, but this is the very first chance I've had to comment before legislators or decision-makers on the draft or on the bill itself. I think that's a bit crazy. Here we are at the very end of the process when it's hard to change very much, and yet this is the very first chance I've had to actually address the question. I think I've got some interesting ideas, but I don't know how they get incorporated at this point. I think that speaks to a process that's not working very well. But I'm glad to be here and to be able to say something.

Let me start just by giving a bit of history. In the 1970s, the way that the city of Toronto got legislation to improve its status and to solve the problems it had was to come to the Legislature and ask a member to submit a

private member's bill that would give the city more legislation. It was a really interesting way of working because the city found on many occasions that the provincial law, the Municipal Act, didn't allow it to do the things that it should do. So it would come and say, "Please give us special legislation in a private member's bill." When we wanted to establish a city-controlled parking authority, we came and said, "Could you give us the legislation?" and the Legislature said, "That's a good idea. Yes, do it." When we wanted to establish speed bumps, which a lot of other people thought was a stupid, loony idea, but we recognized it as something we needed, we came here and said, "Could we have some legislation?" We got the legislation. Then we wanted to control the demolition of houses so that we could stop block-busting, and we came here and said, "We'd like the power to actually stop the issuance of demolition permits." Again, the legislation was changed to allow the city to do it. The last example I will give is, in 1974 the city of Toronto came and said, "We'd like to have the power to institute rent controls within the city of Toronto." We had hearings on that before the private members' committee, and in fact the idea was such a good one that the Premier of the day, Bill Davis, enacted them throughout Ontario.

1700

The point I want to make is that the city actually had a terrific mechanism that would give it the power that it needed. Every year it could come and make a request and, in fact, be dealt with seriously. That no longer exists. Instead, what we're talking about is a great big piece of legislation that is going to define the powers for Toronto and that's it. I know and you know it's not going to work. The biggest city in the country is going to need new legislation to do things that other people haven't thought of yet but are the real problems in Toronto. The question is, what's the mechanism that you're going to use to allow that? Bill 53 is not it.

As you know, or maybe you don't, most of Bill 53—90% of it—is taken from the existing Municipal Act. I've actually done a concordance showing where each section of Bill 53 comes from in relation to the Municipal Act. I didn't make copies for everyone; it's 15 pages long. It goes through section by section, and you'll see that about 10% of the sections in Bill 53 are new; the rest are not. They're right in the Municipal Act. My feeling is, that's a crazy thing to do. I think what you should do is you should say that the city is bound by the Municipal Act, with one exception: that when the city decides it does not want to be bound by the Municipal Act but is willing to pass a legislative framework to exempt itself and put something else in place, it should be allowed to do that. So if it wants to do something really stupid, it should be able to take the risk to do that. That's one of the recommendations.

The second recommendation I make in regard to powers is that the city should be able to pass a bylaw indicating that it wants to replace a provincial law or a section of a provincial law with something else that it

thinks is more appropriate for it. It should be able to do that and take the request to the province, and the province should have four months to say "yea" or "nay" to that particular thing. That's exactly the same as happened with the private member's bill in the 1970s. So it's not a radical proposal; it's an historical proposal.

The first point I would make in regard to powers is that you should take the first eight sections of the bill, which define good, clear, broad powers for the city, and put them into a piece of legislation and then just say two other things in regard to powers: (1) the city can opt out of sections of the Municipal Act if it's very specific about what it's opting out of and what it's going to replace it with; and (2) it should have the option of coming to the province and saying, "We would like to opt out of a particular part of a provincial law and replace it with this," and the province should have a knockout opportunity. I believe that's the appropriate way to proceed with powers. If you proceed with this way of powers that's laid out here, you're going to be hamstringing the city in a way that it has not been hamstrung, except during the last decade or two. In the 1970s it had much more power, a much more co-operative relationship with the province.

That's the first point about powers. I outline that clearly in my letter. Attached to my letter, as you'll see, is draft legislation that actually will implement that. It takes the first eight sections of the bill, because they're the useful ones in defining it, with a few changes, and it then adds on the two things I suggest.

The second thing I'd like to talk about is governance. You must remember that for 50 years Toronto had a local government system that was envied across North America, and it's been destroyed with the mega-city. Now we have—I noticed that one of your deputants today said we have a dysfunctional form of government. We sure do. It does not work. The mega-city has wrecked it. Unfortunately, this bill doesn't do anything to rectify it. In fact, it entrenches the mega-city and then puts another veneer on top of it. It seems to me that the better approach is to say, "Look, city, why don't you talk about the kind of governance structure you think is appropriate for you, and then try and put it in place?"

There should be one caveat: Since we all know that politicians—and I've been one too—will always try and do things that are seen as their interest, even if they aren't, there should be some independent body that reviews the changes that Toronto tries to make to its governance system. I think the appropriate body for that, in spite of all its shortcomings, is the Ontario Municipal Board. I might say that before the megacity, that's what happened in Toronto. When Toronto wanted to change its ward system, it would make an application to the Ontario Municipal Board, which would hold a hearing, citizens would come down, and the OMB would make a decision. We should be getting back to that kind of situation. It allows the city the flexibility to create a governing structure that it thinks serves its needs, and it actually has a review mechanism to ensure that city council isn't just

doing what it thinks is appropriate, but there's a public review body. So I'm suggesting that in fact that should happen. I too am one of those who thinks that the powers in Bill 53 for the province to pass regulations declaring who is going to be doing what in Toronto are wrong—dead wrong. It's as bad as when the Tories said, "We are going to determine the ward structure by regulation." Dead wrong. Don't do it. Take an approach that says, "City, we think you're grown up." That's what sections 1 through 8 say. "You can determine your governing thing, providing you can get the consent of an independent body," such as the Ontario Municipal Board.

The third point I'd like to make is about revenues. As we know, the city is virtually bankrupt. I think if the province didn't extend money to it in bits and pieces, it would be technically bankrupt. It does not have the money. It's largely a result of what the Tories did about the downloading and putting on of responsibilities, but in fact we've got to find a way of solving it. I think there are three things that have to be done. The first thing is that the province has to take back the costs for public transit, for housing and for welfare support. That's the very first thing, and I think it should be part of this bill that the province is going to do that. I don't see any other way of the city getting out of its mess except a re-assumption of those costs by the province.

Secondly, I think the city has to have the power to create a property tax system that meets its needs. It doesn't right now. Market value assessment is just a dangerous way of assessing property. There are better ways of doing it, better ways of working the whole thing that are more acceptable to people. Toronto should be able to try and experiment with that and it should have the power.

Lastly, the city has to be given the power to raise revenues. It doesn't mean the city is going to use it, but it should have that power so that it can actually raise the revenues it wants. I agree with the notion that Jeffrey Simpson keeps saying, that it's wrong for one level of government to raise revenues that it gives to another level of government. That doesn't work. The city should be able to raise revenues however it thinks is appropriate, and if it wants to do something as crazy as income tax, where nobody else is charging it in the surrounding areas, let them try it. They'll see how wrong it is very quickly. But it will probably have some smart ways of doing it. As an example, the city might be able to say, "If the Tories in Ottawa are taking 1% off the GST, we're going to put it back on because we desperately need that money." That kind of option should be available.

So there are the kinds of approaches I think you should take to questions of power, to questions of governance and to questions of money. Do what you say you're doing in sections 1 through 8. Give the city the power to be a mature system of government and actually let it do those things. There should be a few kinds of controls in terms of governance to make sure that what it's doing is not in its own interests, but outside of that, I think the city should have the power to do those things.

I have appended for your interest—and if this was earlier in the process it might be very useful—legislation that actually does that. There are sections that are taken out of Bill 53, plus a few additions. I think the act should be a short one. Five pages will give the city the power it needs to do the kinds of jobs that are expected. But I think if you go on with Bill 53 as it stands, you'll be hobbling the city for the rest of my life. I'm not interested in that, and you shouldn't be either.

1710

The Chair: You've left a minute for each party to ask a question, beginning with Mr. Duguid.

Mr. Duguid: Mr. Sewell, thank you very much for taking the time to prepare a very detailed submission that pretty much covers off every section of the act.

You express some concerns about the consultation process. I guess I just want to remind committee members and yourself that there was a very substantial consultation process that took place around this initiative. In fact, for the first time ever, the city of Toronto and the province jointly embarked on a consultation process that took us to every area of the city. I assumed you were part of that, but perhaps you weren't able to participate at that particular time. So I'm just wondering what your concerns were about the process.

Mr. Sewell: I'm quite willing to talk about the process. The first part of the process was a year and a half of the province, the city and their staffs talking to each other in private. It was very hard to find out exactly what was going on. I couldn't get any reports; I couldn't get a sense of a white paper. Some of us wrote material and tried to have input, but couldn't do it. Then, in fact, a paper was issued.

What happened then is that you had four round-table open houses, which are not a reasonable form of consultation. You get people around the table: "What do you think of this and this?" I'm sorry, but when you're dealing with something as complicated as legislation, you need a big forum where there are lots of opportunities for people to speak and people to hear others so they can actually learn what's going on, because most people don't know what they should be thinking about things. This idea of the round table is a way of co-opting people. So I'm afraid I disagree, and it's why I've never had a chance to present this material to anyone before. There's been no decision-maker willing to listen, including those at Toronto.

The Chair: Thank you, Mr. Hardeman.

Mr. Hardeman: It's good to see you again, Mr. Sewell.

I'm just wondering, on the issue—and you're right: I've gone through it, not quite as extensively as you have, and the similarities with the Municipal Act in a lot of the bill are there.

Mr. Sewell: Direct copies of 90%.

Mr. Hardeman: Yes, and I agree with that. My concern, and maybe I misunderstood you, is that if you take those parts out of the City of Toronto Act and say that the Municipal Act will apply wherever the city wants it to

apply, because you're having an opting-out of anything as it relates to the Municipal Act, does that mean that they're not totally exempt from it and have no rules in those areas where they're consistent?

Mr. Sewell: What I'm suggesting is that—if you go to page 3 of the legislation that I've got, the second page 3, after my brief, it says:

"The city is bound by all sections of the Municipal Act, as it may be amended, unless:

"(a) those sections are specifically contrary to the act"—that is, Bill 53, which no one would disagree with—"or ... the city has, by bylaw, specifically exempted itself from those sections."

I'm saying that the city can exempt itself because it thinks it can do something. It means it would be doing things differently than other municipalities, no question about it. With Toronto's 2.5 million people, it should be doing things differently than many of the municipalities in Ontario.

Mr. Hardeman: I totally agree with you—

The Chair: Mr. Hardeman, I'm sorry; we don't have sufficient time.

Mr. Tabuns, you have the floor.

Mr. Sewell: I'm sorry, I didn't catch that.

The Chair: We just don't have time; we've exhausted our time.

Mr. Tabuns.

Mr. Tabuns: John, thanks for the presentation.

Why do you think the change in approach by the province took place, given that there was relative respect and freedom in the 1970s and 1980s, and then gone in the later half of the 1990s? What changed?

Mr. Sewell: There's no question that senior governments—I'm just quoting Jane Jacobs now—at the national and provincial levels are always threatened by the power and the innovation and the economic viability of cities. That's a common thing; it's happened throughout the world. When it's clear that cities are doing well culturally and socially and economically, then the two levels of government that don't produce that wealth, which are the federal and provincial levels, go after those cities and try and belittle them and try and grab the goose that is laying the golden eggs. It's a common thing that has happened in many countries. I somehow thought it wouldn't happen in Canada, but it has. It's such an awful, small-minded thing, but it means that cities have great difficulty trying to thrive when they've got two other levels of government on top of them that dislike them immensely.

The Chair: Thank you very much, Mr. Sewell. Thank you for your passion.

TIM ROURKE

The Chair: Our next delegation is Mr. Rourke. Welcome, Mr. Rourke. You have 15 minutes to speak to the committee, and if you could give your name so that Hansard has a record of it. When you begin, you'll have

15 minutes. If you leave us some time at the end, we'll be able to ask questions.

Mr. Tim Rourke: It's Tim Rourke. I am 51 years old and have lived on a disability pension most of my life, and always will, unless some medical miracle arises. I'm from Alberta originally. I didn't invent the place; I was just born there. I've lived in other parts of the country. I've lived in Toronto for a dozen years now, and will probably stay here.

I spend my time educating myself and attempting to educate others about issues of impoverishment, social safety, direct democracy and the underpublic. The comfortably well off and the so-called activists do not usually like what I have to say. I am here for one reason, and that is to try to provide an antidote for what I am pretty sure is going to be heard all day and every day of these hearings.

I have well-developed ideas of my own about the forms which the government of Toronto should take. I will talk about them in an appropriate venue, and not here. The only thing the provincial government should be hearing from Torontonians is to get its nose out of the city's business.

The organic laws of city government are something to be decided by the citizens of the city. There must be an end to this idea of government reforms being imposed from above. This is why all these people who will be trooping in here to beseech the almighty province to bestow upon Toronto whatever bright idea they and their friends have thought up are so pathetic and obnoxious.

In a real democracy, which we have never really had in this country, the public of each particular political unit decides the form of their government; it is not handed to them from on high. It is decided by some sort of committee or assembly, with public participation, and then presented to the electorate in a referendum.

Here is the one thing Toronto should be asking for from the province: to facilitate a constituent assembly and referendum on a city charter with its own amending formula. Once adopted, this charter should be made legally immune to interference from the province, except in extreme situations.

I don't know if you've all gotten it, but attached is some further information which might further acquaint you with some of the different ways of thinking about urban issues, particularly something about this rather sad history of urban governments in Canada—here are much better models of government that could be followed—and why city government is so important to people like me, the outcasts. Local government is the only government we have any chance of having a little bit of influence over, and a little bit of protection from social class hatred and so on and so forth.

I'm supposed to leave a bunch of time for people to ask questions, so I wonder if any of you have any questions. Or have I scared you off totally?

The Chair: We'll find out. You've left a little less than four minutes for each party, beginning with Mr. Hardeman.

Mr. Hardeman: Thank you very much for the distinct presentation. I was expecting that we were going to go through the rest of the pages.

I do appreciate, as you state in your presentation, the difference in your presentation, that you're not here to talk about a lot of issues that everyone else has been talking about. I think what I find interesting about your presentation is that, in one way or another, almost every presentation that we've heard dealt with that same issue, and I think even the legislation is somewhat in that vein: It's about empowering local government to do what it's supposed to do. Of course, the main thing that we've been hearing a lot about is its ability—lack of ability, I guess, is a better word—to pay for doing what it's supposed to do. That's been the big debate of what should be allowed to be taxed, what shouldn't be allowed, what kind of power the city should have.

1720

You were here, I believe, for the previous presenter, who spoke about the need to transfer services to the upper tier of government. What I found interesting in comparing the two presentations was that the previous presenter pointed out that those issues you're talking about in your presentation should be moved back to the provincial level, with no local input, and you're saying completely the other. I wonder if you would comment on that.

Mr. Rourke: I've got to wonder about somebody who actually wants to continue with the "obstruct metropolises board." That's ridiculous. Somebody a little earlier than that was talking about how city government is getting in the way and we're conspiring to have a province of Toronto. That's basically what the city needs: equivalent powers to a province. Once we have local government sorted out in a way that would work, then it's the time to negotiate with the province on exactly how revenues and powers should be split. First of all, you can't negotiate from a position of absolute disadvantage, where there's one side that can do and impose what it wants anyway.

Mr. Hardeman: The other thing I was wondering about was that you mentioned that local government seemed to be the one, in your opinion, that was at least somewhat influenceable, that you had some say there, that you could somehow get some results. The difference, living in Toronto, to get that connection to a local councillor or a MPP: Could you describe to me what you find is the difference between the two, why it's easier to get through to city government than it is to the provincial government?

Mr. Rourke: Lately it hasn't been as easy to get through to city government, but traditionally, and in many of the other cities I've been in, if you're trying to do something, you can simply get through to local councillors and local governments a lot more easily. I can go into city hall in Toronto and I don't have to put up with this nonsense. I can usually just sit down and wait and talk at the end if I haven't got on the list already. Here, I'm surprised I didn't have to go through a freaking scanner or something. It's a little forbidding.

The Chair: Thank you. Mr. Tabuns.

Mr. Tabuns: First question: Have you had a chance to discuss your proposals, your perspective, with members of Toronto city council? Where are they standing on them?

Mr. Rourke: I've been up in front of city council a couple of times. They've not said anything in particular about it, but they seem to understand what I'm saying, which is basically that we should have some sort of united voice toward the province to stay out our business, especially to tell the province to take this four-year term and strong mayor thing and shove it back up wherever it came from. It didn't come from the city. It seemed to be some idea that came out of the province. It sounds like it was influenced somehow by business interests that like the idea of having one person they can deal with. This is why they hate local governments. They actually have to justify what they're going. They can't just cut deals behind closed doors. They have to get up and be examined in front of people for what they're doing.

Mr. Tabuns: The other question: Mr. Sewell, when he made his presentation, embodied a number of the concerns you have. How did you feel about his more technical document?

Mr. Rourke: Here just isn't really the place for technical stuff. Here's more or less to create some kind of a process whereby we can set up a more appropriate local government. After that, once we get that going and we have something that can more legitimately speak for the whole city, then we can work out all these technical details. There's this tendency in Toronto for these small groups of people to act like they're speaking for the whole city when there is actually just a little group of about four or five of them.

I come here and I never make any pretence that I'm speaking for anybody but myself. This is something that I don't really like too much about city government, and it's simply because of the way it's set up, the way it's restricted. There are limited chances for people to talk, usually, except in a few areas where we have very well-organized community associations, neighbourhood associations. There's great effort to try to discourage that, to try to make city government more like a provincial government, more inaccessible. They're not really successful on that. Democracy is not about little groups of people saying they want this or that. It's about electing people to actually decide, not everybody coming in, wheedling dispensation from the powers, but people electing ordinary people like themselves to decide these things and have the stuff filter up from the bottom.

The Chair: Thank you. Mr. Duguid.

Mr. Rourke: Ran out of time?

Mr. Duguid: Pretty much, Mr. Rourke. I just want to thank you for being here. It's good to see you again. I've seen you at many committees in my days at the city. It's good to see you're still active and involved, and bringing your thoughts and views to both the city and now the province. It's good to have you here.

The Chair: Thank you very much for being here today. We appreciate it.

DAVID HANNA

The Chair: Our next delegation is Mr. Hanna. Mr. Hanna, do you have a handout or anything?

Mr. David Hanna: Not presently, no.

The Chair: Okay. Great. If you could identify yourself at the beginning for Hansard, and then you'll have 15 minutes.

Mr. Hanna: David Hanna, citizen of Toronto. You'll have to excuse my cold. I'd like to read something from a book just as an introduction. It's called *Utopia: Towards a New Toronto*. You may be familiar with the book, but perhaps not. There's an interesting chapter by Deanne Taylor, who's a famous Toronto playwright and actress:

"To live in Toronto is to live in two cities at once: one real, one virtual.... Toronto's most amplified mythmakers are the oracles of media, business, politics and city planning.... [most publishers and broadcasters are faithful to] Toronto's colonial tradition of emulating or importing, rather than creating, and derive the bulk of their advertising and content from the American infotainment empire."

Basically, she's talking about how business and media seem to have a higher hand than citizenry: A "City That Goes Ka-Ching. For these corporate utopians, Toronto is real estate and ad space, citizens are consumers, city hall is a business facilitator, and politics an extension of deal-making. To make their dreams come true, they groom political candidates"—

The Vice-Chair (Mr. Jim Brownell): Sir, I wonder if I could ask you to move back from the mike a bit, or move it up.

Mr. Hanna: —"finance and run election campaigns, write and promote public policy for private profit... Hollywood North or the City That Goes Ka-Ching...."

"On one side are the corporate lobbyists and strategists, paid by the year, friendly with politicians and bureaucrats, fluent in laws and loopholes, armed with the civic goods of Progress, Growth, Development, Investment, Tourism, Intensification, Renewal...."

"City hall's enthusiastic support for the theft of the waterfront (and for other deals equally scandalous....)" I'm skipping around quite a bit in her chapter, but I'm trying to make a point. "...foes of the public interest are too powerful to be reformed by one election."

"Their narrow, kleptocratic vision of the virtual city is entrenched in city budgets and bylaws, and enshrined in the latest official plan, a utopian blueprint seemingly guided not by city planners but by accountants. The plan describes an imminent Torontopia that does not aspire to be a greater society or more civilized city, but a bigger and cheaper tax base, a magical place where a million new taxpayers can be acquired for 'free' by wedging them into the already-paid-for public infrastructure...."

1730

I guess the point I'm trying to make is that I'm not sure that Bill 53 addresses the aspects of certain characteristics that are mentioned in this; for example, lobbying. Right now, with the new City of Toronto Act,

it's not necessary to penalize lobbyists who break the rules. Just to have a new lobbyist rule that says, "We hope you follow it," I don't think is sufficient. It makes no mention—I'm quoting John Barber somewhat here. The new City of Toronto Act doesn't give the city "authority to ban so-called success fees—bonuses lobbyists collect when they succeed in influencing policy."

The next point would be the aspect of the four-year term. I understand that that is being dealt with in the budget, but I think it's worth a mention here, because it is mentioned in the bill. The city of Toronto, or any city or municipality, is not a provincial government or a federal government, obviously. Those upper two levels of government can have minority governments and be washed out in a year, in a day. If we change this to four years for the city, that won't hold. The city doesn't have a party system, at least not a formal party system, so there are great differences. I think that was part of the reason to extend it to four years also. The Association of Municipalities of Ontario apparently wanted it, but it's a self-serving feature. It does nothing for democracy, I don't believe.

Some of the aspects of the bill are great, giving more autonomy and authority to the city. However, I realize that there are provisions in it, right in the introduction, that say, "We can take it back whenever we want," as well. Those are my words, but I think it's clear in the introduction that the Lieutenant Governor and cabinet have that prerogative. Maybe it should be; if we get an all-powerful mayor, it might be needed.

That is part of the problem with Bill 53: the aspect of the strong mayor system. I understand that Mr. Miller has backtracked on that. At first he didn't want it; now he's just saying a "stronger" mayor. Basically, the aspect hasn't changed, just his spin on it. I understand that a lot of this bill is basically a carbon copy of the board of trade's proposal. I think it lacks in that aspect, as did some of the city-run meetings with the public on it. In fact, it's referred to in the press as a "fortified" mayor. I don't think that's what Mr. Miller or any mayor wants to be. I think he wants to be open and inclusive. Being all-powerful, in a certain sense, is not a good thing.

I'm from Windsor originally. I've been in Toronto since 1980, but I went to school in Detroit. I know that city quite well. I grew up around it. Detroit surrounds a city on three sides: Dearborn; it also surrounds two other cities, Hamtramck and Highland Park. It is surrounded itself by various other cities as well. They never had a metro model per se, not a functional one. In my youth, Dearborn had a mayor for around 35 years, I think. It must be a North American record. It turns out he was a racist, a bigot and various other things. Even in his last campaign, he used the posters and billboards from his first campaign, but the people voted him in. The point I'm trying to make in that extreme example is that when you don't have term lengths, you can get people who can stay there forever, because the incumbent always has an advantage. When you have a so-called strong mayor system, the American model, I think the citizenry loses. You need to be able to have the council as a whole vote

for the chair heads. The aspect of an executive committee makes it kind of an elitist forum.

There have been some proposals to amend that somewhat. Paul Bedford had some good examples; I don't know whether he's already spoken before you or not. The aspect of having a councillor-at-large elected to the executive council, if that had to be, would be one way of considering it. But I think that more power does have to go to community councils and there has to be something looked at, either increasing the number of community councils or else looking at a different system, something referring back to what we had before, pre-amalgamation. I don't see that coming, but we can take elements of it.

I don't think it's a good idea for the mayor to appoint the CEO. It has to be a decision of council. The mayor has a great deal of say; he is elected across the city on his own. Nonetheless, that shouldn't make him king. We elect councillors and they represent individual communities and the city as a whole. They need that vote for those kinds of decisions.

I understand that there have been proposals for advisory panels for community councils to get citizen involvement. I don't know how those would pan out in any plan yet, but I think they're a good idea. I think there are problems with favouritism and discrimination at city hall. I could name numerous examples I won't go into, but that's definitely still there. There are proposals to have more accountability, but it doesn't seem like all the enforcement aspects of that accountability are necessarily there. I'm wondering what improvements could be looked at there.

I do think that a decentralized model is important, and that gets back to community councils and the aspect of giving people time to speak with their councillors. In fact, you give more time here than they do at city hall. It's five minutes there, as some of you know. This aspect of standing committees not referring back to community council: I don't know if that would be a good idea, because it lessens by one more chance citizenry input.

I know there has been a lot of study of various other cities—Vancouver; London, England etc.—and there are benefits from those models, but there is still a need for improvement in this particular bill. I'm hoping that this committee can look into that with other people from the city and perhaps even regular citizens, not just look at the input that was gained here. Perhaps other people who have given good suggestions could be called upon again to look at things in greater detail.

1740

That's most of the gist of what I had to say. But I'd also refer to one article that was written by Ruth Grier recently, when she mentions a skateboard park in the Etobicoke area that was pushed through. It was a decision by parks and the councillor. The citizens weren't given proper input. The same thing has happened recently with a waterfront issue that you may be aware of, the Palais Royale, but at least the councillor has given it second thoughts now. But the fact that often the community is not informed properly—these things occur, and they shouldn't. Part of that is because there isn't a proper

system of planning offices in neighbourhoods, as we used to have. We don't have a planning advisory committee, which the old city of Toronto used to have. I understand that there's input in this bill to allow for a design review panel, but it sounds more like a recommendation than being able to give as much input as there should be.

I do agree with the changes in the OMB act and giving the city more power in that area, but I would also caution that it has to have overview so that it doesn't get abused as well.

That's basically what I had to say: just the fact that we need to empower community councils, that we need to have a greater degree of citizen input, and that we shouldn't move forward with this aspect of the strong mayor. The mayor has a lot to say with who is appointed now, and I think that's sufficient; it shouldn't be formalized in that sense. It doesn't do anything good for the citizenry. For example, Mayor Miller is one mayor, but we could have a totally different mayor. Even Mr. Miller isn't perfect—nobody is—but we could—

The Chair: Mr. Hanna, you have one minute left, if you want to summarize.

Mr. Hanna: Thank you.

It does take about \$1 million to run for mayor; \$30,000-plus to run for councillor. This aspect of changing the terms gives the incumbent further advantage, and so we don't get fresh blood and new insights when we've seen these extended terms of some councillors.

Thank you.

The Chair: Thank you very much for being here today. We appreciate your time.

HAMISH WILSON

The Chair: Our last delegation today is Mr. Wilson. Welcome. Do you have a handout for us today?

Mr. Hamish Wilson: No, not really, thank you. I appreciate the asking.

The Chair: All right. I just wanted to make sure if you did or not. Welcome. If you could identify yourself for Hansard, and when you begin, you'll have 15 minutes. If you leave some time at the end, we'll be able to ask you questions.

Mr. Wilson: Hamish Wilson. Thanks for the opportunity to be here before you. I hope I can offer some constructive suggestions.

Certainly there's a lot of work here and many good things, yet there are things of some concern and a few areas that could be tweaked, if not radically reformed. The scope of the bill certainly indicates that cities are horrendously complex. It's a very huge bill, and yet some things still could be better.

For instance, we don't really see direct reference to energy policy. I think that's a major oversight. There's a hint of environmental protection, and yet I'd like to see a lot more of it, please.

There's a huge change in attitude and approach from the deemed shift and shaft of the Harristocracy. Many of us still resent the forced "amalgamation," as Don Harron termed it, that we endured and are still coping

with the after-effects of. The city is in rough shape, arguably, in many, many areas, and the financial stresses are real, as well as administrative ones.

I note one of Mr. Sewell's comments in his online bulletin 63 in localgovernment.ca: "Toronto and other municipalities have no defence to a provincial government which wants to impose itself...." It may not be as bad as what Mr. Sewell is worried about, yet he does have perhaps a legitimate concern about the length of time in which reviews of this sort of legislation can occur. So may I suggest that we include a review of this legislation after, say, six or seven years, that you make sure there is actually a built-in review clause, please, to see if it is in fact working? The cities are important.

There are still a lot of limits upon the city, and it's not as if we're really getting full status as an equal member of our three governments, shall we say. We're still a creature of the province. I think there are still a lot of limitations and that other cities in other jurisdictions may fare better in other parts of the world and other parts of Canada.

I would stress that cities are key to striving toward environmental sustainability, but I don't think we're getting to that point from here, from this legislation, in part because our financial sustainability is still an issue. More on that later. Certainly Toronto is not as green as it purports to be, I'm afraid. Some internal indications are that we're at least 20% above the 1990 levels of stabilization of greenhouse gases and nowhere near the 20% trimming that was represented and agreed to as the Toronto target, and that's a real concern.

I also worry that we don't really have environmental stewarding as a major goal of the city. In section 131, we could—and should, I feel—add some function of environmental well-being in terms of the purpose and goal of the council. It's part of the mayor's job in subsection 134(d); why not of council? Can we add "environmental well-being" and even refer to the Toronto target, which again, many parts of the world, including Germany, have taken seriously?

The tree references in the act are good. I appreciate that you're working to preserve our tree bylaw. That's good, but we could also tweak the legislation to say, "may plant trees regardless of wishes of adjacent property owners," because it's sort of if the property owner doesn't want to have a tree in their front yard, they don't have to have a tree; that's my understanding. But, believe me, we need to have trees; in fact, more of them, please, everywhere.

The mention of green roofs in section 108 is very good. I'm concerned about the repealed reference. I don't really understand that. I don't know my way around the processes here terribly well.

Our transport sector leads greenhouse gas emissions growth, but how much of this bill actually addresses these problems? I think there are some things that are helpful, but I think we should be doing more.

It's good that the traffic calming is being removed from the EA process. It doesn't merit that degree of scrutiny, I feel, when the overall nature of the smog-

creating mess of daily travel isn't given the same degree of scrutiny. So that's good.

Some things could be done to leverage the tax system to reflect a changed set of priorities. In the tax exemption—I think it's 247(6)—instead of exempting all public institutional areas from taxes, what about only exempting, say, four parking spots and the rest of a parking lot being taxed? Now, that would probably bother a lot of union people, politicians and other people, but I think in terms of moving ourselves towards sustainability, we have to tweak the financial things that encourage free parking. If we taxed parking lots, I think we'd be in better shape. Not paying the full cost of parking is an incentive to drive.

Similarly, railways have to be taxed. In section 275, there's the use of the word "shall." But I don't believe that we can tax incoming trucks, because roads can't be taxed. That's another embedded inequity that tends to favour the more polluting modes.

I certainly can understand why there's a lot of sensitivity towards road tolls, given the 407 experiences, but we've got to start charging for the limited access freeways, turning the freeways into feeways. The sets of hurdles that must be overcome in sections 41 and 46 are substantial. It's certainly an indication that cars vote, or at least the domination of the city by the car-driving suburban politicians of all levels still keeps the compact urban form in check, as it were.

There is a real inequity of transport and paying for some facilities—well, it's inequitable. Even though some of my rent money goes to pay for the Gardiner, for instance, I can't ride my bike on it. I don't think that's fair. An analogy is that the city is providing a free electricity source for people, so it's not really a surprise that they plug in the mobile heaters whenever they can, even though the city offers a fairly good sweater package, though they have to pay for it. By "sweater," I mean you can take the TTC, but you have to pay for it.

The limits of liability on the city when it comes to the transport sector—that's the roads. I feel it's too generous when it comes to cycling conditions. What is "reasonable in the circumstances" when we have a climate crisis and when cycling in the city is really pretty rough? The roads are in very rough shape if you're a cyclist, Wellesley nearby here being an excellent example. It's supposed to be a major bike route, yet just behind Queen's Park here, it has degraded to the point of being unsafe to ride on.

1750

I don't think it's okay to let the city off the hook so much. There is money for some things. I have written specifically to the city hall legal department, saying, "Hey, we have a problem here." A year later, there is no action. I think there are a lot of problems here. I certainly won't defend all cyclists. There are some who are dangerous dorks. There are real problems with some cycling behaviour, but there is a whole raft of problems. It could be money. Again, there are reasons for concern here.

I think we could get more financial room. Why can't we have some direct tax on gasoline? Why can't we have

a 1% sales tax? We have to dispose of much of the stuff that gets bought in the city, so why don't we have some indirect support for disposal and recycling? Why can't we have a tax on advertising? Or an asphalt tax? Or registration fees for any vehicle registered in the city? Again, what about an energy tax, some tax on the energy that's consumed in the city? There's no taxing of natural gas, but we pass huge amounts of gas into our common atmosphere, to the point of lethality. We have a smog crisis and there is a known enhanced mortality rate from our bad air. What about a chewing gum tax? That's a bit of a problem for our city, too. The blobs of black on our sidewalk are unattractive and very hard to get rid of.

I have had a long-held concern about wasting the embodied energy of our built heritage, which could be addressed through a demolition tax. Our built environment is an enormous storehouse of resources and energy. Every demolition is an urban oil spill, basically, and it can be a huge waste. Sometimes the public institutions are as bad as the private ones, I'm afraid. I'd note the gross waste of the half-round Riverdale hospital building. It's a sound structure; it could and should be reused. A demolition tax might help nudge it the other way. The city itself sold the old Jarvis Street police headquarters. So some sort of measuring of the embodied energy of a building and then applying a tax to its demolition would be a start. I prefer stronger measures such as outright prohibition of demolition when there is enough space around a building and a lot of embodied energy within it. We have provisions for stopping the demolition of residential rental and its conversion, but we also really need to stop other demolitions, please.

Tax systems are very problematic and complex, and I'm not exactly sure what the status is of the education portion of the property taxes, but my sense is that we still have a lot of inequities within the GTA region. Certainly in the core, we've had a doubling of the property tax in many areas, while suburban property is stabilizing or declining, I believe. I know it's a minefield and sometimes there's too much protest about high taxes etc., but I believe there can be solutions such as in California, where property tax hikes are limited to the inflation rate until the time of sale. And you know that there are problems with MPAC as well.

I am opposed to the four-year terms contemplated, even though it isn't part of this particular bill. I also have a problem with the executive committee proposals in section 151. I don't think that things are that broken, though they are messed up.

I also have a worry about allowing referral to the OMB within 30 days, in subsection 114(14). That could well undermine planning in the city, which is very challenged as it is. There's the joke about the role of the planning department here because of the automatic recourse to the OMB. The role of the planning department: Could you take a few storeys off of that?

There are some sensible tweakings that will improve revenue, such as in section 364 where the owner of a car

must be paying for all fines from its operation within the city and any tickets.

Please don't presume that the city's official plan covers the opportunity for transit rights-of-way, as in subsections 114(11) and (12). I've had a long concern about missing an opportunity for a Front Street transit-way instead of a car-based Front Street extension. There's a chunk of land at the northeast corner of Spadina and Front that really needs a reservation for a right-of-way, and no action on it. All through Mr. Miller's term, I've been waiting for civic initiative in solving this car-based problem and converting it to a transit-based opportunity—there are about six transit options that are being unexplored here. I don't know, maybe a four-term might help them get the message through, but it's been a while yet.

As for accountability, I think we have a bit of a problem when we're supposed to get maybe \$200 million from the province for transit—thank you very much for that and for other extra revenues; it's definitely a help. The TTC chair said we only needed \$16 million to avert a fare hike, and yet we got a fare hike. So there's a bit of slipperiness sometimes when money goes from here down the street, and that's a bit of a problem.

I think part of all this is probably not wanting to look at what the cars cost. That's perhaps a \$400-million-a-year expenditure within the city. Again, from being "amangle-mated" in our motoropolis, I don't think we want to look there.

Regrettably, I don't think we need the Spadina subway nearly as much as new buses and other equipment for the TTC, and we also have a big project out in Scarborough. I know this is not really related to this particular bill—but.

To really enhance accountability, it's too bad we can't somehow legislate three meetings a year with all the elected representatives from an area in attendance. I think we might get a lot more done. So every four months, civic, provincial and federal representatives have to meet in public in their own wards or constituencies.

The Chair: Mr. Wilson, you have one minute left.

Mr. Wilson: Wonderful.

So it's a pass here. Thank you very much for it, but we're still limited in a number of ways. It's much better than where we've been at. It misses financial and environmental sustainability, and I would say, let's tweak it in another six years. Thank you.

The Chair: Thank you very much for being here. We appreciate your time and your ability to finish despite the distraction of the bells.

Committee, this brings to a close our hearings for the day. I'm told that you will have an interim summary available tomorrow, which will capture the first three days of our hearings. I would like to thank all of our witnesses, our members and the committee staff for their participation in the hearings.

This committee now stands adjourned until 3:30 p.m. on Monday, May 15, 2006.

The committee adjourned at 1757.



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Monday 15 May 2006

Journal des débats (Hansard)

Lundi 15 mai 2006

**Standing committee on
general government**

Stronger City of Toronto
for a Stronger Ontario Act, 2006

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STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 15 May 2006

Lundi 15 mai 2006

*The committee met at 1553 in room 151.*STRONGER CITY OF TORONTO
FOR A STRONGER ONTARIO ACT, 2006
LOI DE 2006 CRÉANT
UN TORONTO PLUS FORT
POUR UN ONTARIO PLUS FORT

Consideration of Bill 53, An Act to revise the City of Toronto Acts, 1997 (Nos. 1 and 2), to amend certain public Acts in relation to municipal powers and to repeal certain private Acts relating to the City of Toronto / Projet de loi 53, Loi révisant les lois de 1997 Nos 1 et 2 sur la cité de Toronto, modifiant certaines lois d'intérêt public en ce qui concerne les pouvoirs municipaux et abrogeant certaines lois d'intérêt privé se rapportant à la cité de Toronto.

The Chair (Mrs. Linda Jeffrey): Good afternoon. The standing committee on general government is called to order. We're here today for clause-by-clause consideration of Bill 53, the Stronger City of Toronto for a Stronger Ontario Act, 2006.

We have a lot of material to cover today, and as this bill is composed of three sections and three schedules, we need unanimous consent to stand down the three sections in order to consider the schedules first. Do we have agreement on that?

Mr. Peter Tabuns (Toronto–Danforth): I don't understand it. Sorry.

The Chair: Maybe I can get the clerk to explain. It's probably easier.

The Clerk of the Committee (Ms. Susan Sourial): The bill is composed of three sections and then three schedules. If the sections passed and the schedules didn't, it would affect the sections. We need to deal with the schedules first and then go back to deal with the sections.

Mr. Tabuns: I see. In other words, we're going—

The Chair: It's the way it's printed in the bill. We're just doing the business of the bill first and then we'd come back.

Mr. Tabuns: Fine.

The Chair: So you will still get to vote on it. It's just the order of how we vote.

Mr. Tabuns: Okay.

Mr. Brad Duguid (Scarborough Centre): We don't know what it means, either.

The Chair: It's the way things are printed, I think.

Mr. Tabuns: Fine.

The Chair: Are there any comments, questions or amendments to the bill and, if so, to which schedules and which sections? If there are none, we'd move on to work on schedule A. So we'll stand down the first three sections. Is there agreement on that?

Would you like me to go over it again, Mr. Hardeman?

Mr. Ernie Hardeman (Oxford): Yes, if you would, Madam Chair.

The Chair: This bill is composed of three sections and three schedules. We need unanimous consent to stand down the three sections in order to consider the schedules, so that we can do the business and then we'll come back to the sections.

Mr. Hardeman: Can I get some clarification as to what the intent is here?

The Chair: I'll get the clerk to explain it again.

Mr. Hardeman: Thank you.

Ms. Laura Hopkins: Members, I can probably help using the bill itself as a visual aid. If you flip to the end of the explanatory note, which is about eight pages in—the page numbers for the explanatory note are i, ii, iii—you'll see the first page of the bill proper. The first page of the bill proper has a short table of contents, and the first section is labelled Contents of the Act. I'm just wanting to make sure that everybody's looking at the same page of the document.

What is proposed is this: We skip the first page of the bill, skip the second page of the bill, which has section 3 on it, and begin debate with schedule A to the bill. Schedule A itself begins with a table of contents that's several pages long. You'll know that you're in schedule A if you find a table of contents that appears to be about 10 pages long. So we move to page 14. Once we're on page 14, we're inside schedule A, and schedule A contains the proposed new City of Toronto Act. The structure of the bill is quite confusing. It's the nature of the beast.

Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell): So we are going to page 14, which is part I?

Ms. Hopkins: I understand that's the proposal, yes. We'd be starting with section 1 of schedule A, which appears on page 14, part I, Interpretation.

Mr. Lalonde: Okay.

The Chair: Is everybody clear? Any comments or questions?

Seeing none, we're going to move on to schedule A, part I, section 1. On sections 1, 2, 3, 4 and 5 there are no amendments. Is there any debate on sections 1 to 5 of schedule A? Mr. Tabuns.

Mr. Tabuns: Well, in fact, I do have an amendment on page 1 of the package of amendments.

Mr. Duguid: Section 6.

The Chair: We're not at that point.

Mr. Tabuns: Okay. My apologies, Chair. I'm still finding my way through.

The Chair: Don't worry. If you could see the pile of papers I have here, I completely understand your confusion. There's a lot of material to cover.

So on sections 1 to 5 we have no amendments. Shall schedule A, sections 1 to 5, carry? All those in favour? That's carried.

Part II, General Powers of the City, section 6. Mr. Tabuns.

Mr. Tabuns: I move that section 6 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following subsection:

"Same

"(1.1) Limits of the powers of the city under this or any other act shall be strictly construed."

The Chair: Any comments or questions? Mr. Tabuns, do you want to talk about this motion?

Mr. Tabuns: It's simply saying that we don't want to put unnecessary restrictions on the city of Toronto. It seems to be the intent of this bill to expand the powers of the city of Toronto. We don't want to have limitations on the city strictly construed.

Mr. Duguid: "Strictly construed" can be interpreted in a lot of different ways. We're looking at this and we think the powers of the city already will be interpreted broadly with the way the section is now and are a little concerned that any added restrictions with wording that we're not quite sure what it means could impact on our ability to protect the provincial interest in the end. So we will not be supporting this motion.

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Mr. Hardeman: I disagree with the amendment. As I read section 6 now, in fact, it states that "The powers of the city under this or any other act shall be interpreted broadly so as to confer broad authority on the city...." As a legal document, if you go beyond that "broadly" and then infer that the limits of the city shall be "strictly construed," I think it goes one step further. I don't think anyone judging as to whether the powers were there or not—putting both in place I think would be like the Ombudsman suggested about a David and Goliath type of arbitration, as to whether the constituent or the taxpayer or the city was right or wrong on an issue. When you emphasize the broadness of it and the unrestrictedness of the piece of legislation, I think this goes a little further than one should go. Remember that in the presentations we had, if there were concerns expressed about the act, almost exclusively the concerns were based on the city going further than anyone was envisioning they were going. So I would have problems with saying that's what we now agree they should be doing, taking

the other side of the issue every time, the more permissive side of any authority they were given. So I can't support this motion either.

The Chair: Any further comments or questions?

Shall the amendment carry? All those in favour? All those opposed? That's lost.

Shall section 6 carry? All those in favour? All those opposed? That's carried.

There are no amendments for section 7.

Shall section 7 carry? All those in favour? All those opposed? That's carried.

Section 8: Mr. Hardeman.

Mr. Hardeman: I move that section 8 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following subsection after subsection (3):

"Public hearings re taxes, fees and charges

"(3.1) The city shall not pass a bylaw to establish or increase a tax, fee or charge under this or any other act unless the city gives notice to the public of the proposed bylaw and holds public hearings in respect of it."

The Chair: Any comments or discussion?

Mr. Hardeman: I think it came out in quite a number of the presentations that in fact the extra powers required for accountability purposes should require the city to make sure that the public was informed and that it was explained to the taxpayers of the city why a tax was being put in place and why a bylaw was being passed, so everyone would be informed so they wouldn't just wake up one morning and have it happen. This is already required under the Municipal Act. We think it's appropriate that for accountability purposes the city of Toronto would meet the same requirements as it relates not between the province and the city but between the city and the people they govern.

Mr. Duguid: We will not be supporting this motion, for a number of reasons. The first is that the city already has the obligation under this act to notify the public, provide notice. The question is, how should they provide that notice? Our view is that the city is mature enough and responsible enough and accountable enough to their people to put in place a process that is fair and transparent. So we believe that will be sufficient.

Secondly, I can't help but think that this is so much of the mentality that would have made municipalities have to bring forward referendums whenever they had to raise taxes. It's a tough decision for municipal politicians to raise taxes. I think the accountability should be in the electoral process. We're absolutely confident that the city of Toronto will be accountable for whatever they do. They'll share that with the public. They'll share that information. You can rest assured that it would be virtually impossible for the city of Toronto to impose new taxes without the public having ample opportunity to engage in discussions on it and without the public being fully notified. That just would not happen with the scrutiny of the media in this city. As I said, there's already a provision that would require official notice anyway. We just feel that this is way too prescriptive to go any further than what we've done.

Mr. Hardeman: Contrary to the parliamentary assistant's comments, I think we had many presentations where people did not have the confidence that the parliamentary assistant has that the city will not pass on tax increases without due notice, without proper notice to their constituents. It was pointed out numerous times that the people in Toronto were really concerned that this could happen. In my opinion, if the city deems it appropriate to give proper and adequate notice, this will not be an impediment to that. This will encourage that to happen.

I don't know how you could give proper notice without providing the opportunity for the public to be heard on the issue. That's really all this is: You must have a meeting where the public can be heard on the need for changing and adding new taxes. This isn't for the budget, that they must have a meeting to pass a budget increase, as the parliamentary assistant was implying; this is if they want to put in a new tax. We will be dealing with it later on in the bill with the land transfer tax. If they decide that they're going to include the land transfer tax, and hopefully they won't be able to, but if they can, we think it's appropriate that the people of the city of Toronto have an opportunity to appear before the people who are going to impose this new tax and be heard on the issue. The mayor told us quite clearly that he would not be interested in imposing a tax that was going to be harmful to the sector on which he was imposing the tax. I don't know how he would know that if he wasn't prepared to hold a meeting so the public could be heard on the issue.

I see absolutely no detriment to this. I think it would be of great assistance to the people of Toronto to know that before these things were going to happen, their city council had to ask them—tell them first what was going to happen; not ask them, but tell them why they were doing it and what they were doing.

Mr. Duguid: Just to be clear, the procedural bylaws for the city of Toronto are such that such decisions are made at committees where the public are invited to make deputations. I can think of no circumstance where the public would not have ample opportunity to depute and have their views heard and where any decision regarding a new tax would be made without a great deal of public scrutiny. I think the idea of telling them that they have to go out and do public hearings is excessive. They may choose to consult with their public in another way, but as a mature level of government, my view is that they should be given the alternative to determine what the appropriate level of consultation is, provided they provide public notice, which is what we're demanding be done within the act.

Mr. Tabuns: I just wanted to say that—I'm sure Mr. Duguid could speak to this as well—my experience on city council, and anyone's who sat on a municipal council, is that when you change fees, taxes etc., it happens during the budget process. There's an awful lot of public scrutiny at that time, and anyone who tried to change fees etc. outside of the budget process would invite a huge amount of hue and cry. I would say this is redundant and overly prescriptive.

Mr. Hardeman: Having sat on municipal council for 14 years, I can tell you that I am aware of what's required in a public meeting and what's not required to have a public meeting for. As both the parliamentary assistant and the member of the third party pointed out, there were already committee hearings being held through the committee process at city council, so this is not needed. The truth is that this legislation doesn't say there have to be special public meetings for that purpose, as long as that purpose is part of the hearing. Under this amendment, it would include, if it's being done at committee, that that was a public hearing on the issue and they could use that for it.

I would point out that this clause is presently in the Municipal Act, and the debate took place when that was put in the Municipal Act as to whether it should always be done at budget time and be part of those budget hearings. The reason this was added is so the municipalities could have these changes and tax increases totally apart from the budget by just holding and informing the public of that happening. That's why it was needed. But under this regulation, or this amendment, holding the budget meetings, noting that that was part of the budget, would include and be the public hearings that we're talking about. This is just to make sure that we can't not include them in our budget process, and then on June 1, when everybody's out of the city, impose land transfer taxes that no one knew about. This prohibits the city from doing that. If they have no intention of doing that, this will never be needed, but if they do, then there's protection in there for the citizens—again, not for the province, but for the citizens—of Toronto to be heard by their city council before this happens.

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The Chair: Any further debate? Seeing none, all those in favour of the motion?

Mr. Hardeman: Can I have a recorded vote on that, Madam Chair?

Ayes

Hardeman.

Nays

Brownell, Duguid, Lalonde, McNeely, Rinaldi, Tabuns.

The Chair: That's lost.

The next motion: Mr. Tabuns.

Mr. Tabuns: I move that clause (a) of the definition of "local board (restricted definition)" in subsection 8(6) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out.

I think this is a housekeeping motion, more than anything else, requested by the city. It deletes reference to a society under the Child and Family Services Act, since these societies are not local boards of the city.

The Chair: Any further debate?

Mr. Duguid: There will be an ongoing theme through a few of the sections that we go through regarding what is and what is not a local board. There are issues surrounding it. I think there are some interesting discussions that can be had on some of these issues as to what should be considered a local board and what shouldn't be, and as we move forward through this legislation, what boards the city should have the ability to delegate and not delegate to and so on. It is a little more than an administrative amendment, because it does have implications as to what boards down the road in the legislation can be delegated to. We're not prepared at this point to move beyond where we're at, but that doesn't mean, when the two-year review comes up, that this wouldn't be an issue, at that point in time, that we might want to take a closer look at and, in consultation with the city, perhaps move a little further along.

Mr. Tabuns: Just out of curiosity, then, are you suggesting that societies set up under the Child and Family Services Act might be moved into the jurisdiction of the city of Toronto?

Mr. Duguid: No.

Mr. Tabuns: So if they aren't under the jurisdiction of the city of Toronto and you don't plan to move them under the jurisdiction of the city of Toronto, why would they be counted as local boards? They don't report to council, they don't have their boards appointed by council, they exist as separate entities. I understand that they are entities that the province has responsibility for, not the city. Is that not correct?

Mr. Duguid: There are a series of boards that probably merit a look at in terms of where they should apply and where they shouldn't—police services boards—and there is provincial interest in some of these. It's a case of trying to figure out where all of them land. We're not in a position where we've determined that we can go any further at this point. We think there's probably some time for some further discussion on some of these matters.

I'm not saying that we're necessarily opposed to this. We're not in the mindset yet where we're sure we can approve it without some unintended consequences potentially occurring. We want to take a closer look at it. I think the two-year review would be a perfect opportunity for us to do that, and then move forward. So at this point in time, we can't support it, not because we think it's necessarily a bad motion. We're just not fully prepared yet or sure that it's the right thing to do.

Mr. Tabuns: I understand your argument.

Mr. Hardeman: I understood the motion right up until the time the discussion started, and then I got confused.

To the clerk: What is it that we're debating to take out? Is it to make the definition broader so more boards apply, or is the intent of the motion to reduce the number of areas that this section will cover? The definition of "local board (restricted definition)" means a local board other than—so all the ones listed are the ones that are restricted now. Is that right?

Ms. Hopkins: Currently, the definition of "local board (restricted definition)" would exclude the societies that are described in clause (a). Deleting clause (a) would appear to move those societies into the definition of "local board (restricted definition)." So it would appear to characterize them as local boards.

It may be that it would be more helpful for you if we were to ask for the expertise of ministry staff on this point. I believe it's more complicated in law than what I've just represented to you.

Mr. Hardeman: To go to the mover of the motion, if we could, Madam Chair, is the amendment intended to include the societies defined under the Child and Family Services Act or to exclude them?

Mr. Tabuns: It is intended to exclude them because they are not local boards of the city. The city doesn't appoint their boards of directors, the city doesn't fund them, the city doesn't control them. They don't report to the city.

A board of health is a different animal. A board of health is integrated into the city of Toronto decision-making machinery. It's easy enough to understand, why it would be considered a local board of the city of Toronto. The Children's Aid Society of Toronto is another matter.

Mr. Hardeman: To the mover of the motion, the way I read the act presently, "local board" means a local board other than a society as defined under subsection 3(1) of the Child and Family Services Act, a board of health. So neither the society, under the Child and Family Services Act, nor the board of health is included in "local boards." I'm not sure—

The Chair: Mr. Lalonde has a question. Maybe he can be helpful.

Mr. Duguid: Could I—

The Chair: Can I recognize my speakers' list first? Mr. Lalonde, and then I will come to you.

Mr. Lalonde: Definitely, when I look at clause 8(6)(a), does that mean that Mr. Tabuns would like the city of Toronto to have full responsibility of children and family services, according to the amendment that is submitted? At the present time, the city of Toronto will not have a say in the Child and Family Services Act.

Mr. Tabuns: I understand the question you're asking. I relied on the recommendation of the city of Toronto, whose interpretation was that the wording here brought the Child and Family Services Act entities under the control of the city of Toronto; considered them as local boards. Until I've looked at it a bit further, that still seems to be my interpretation of it. They're trying to ensure that local boards—like a police services board or a public library board, which in fact is integrated into the structure of the city of Toronto—remain counted as local boards.

Mr. Lalonde: That excludes those: "other than". It's clear.

Mr. Tabuns: By your interpretation, the Toronto Public Library Board, which is a local board of the city of Toronto, funded by the city—the board is appointed

by the city; it reports to the city. I can't imagine that that is excluded as a local board.

The Chair: Mr. Duguid.

Mr. Duguid: Later in the bill, as we go through, we'll see motions that deal with things like passing down or delegating of powers to local boards. I'm trying to think of some of the other things—I can't off the top of my head—but we'll see these things as we go through the bill. The problem is, many of these boards are dealt with through other legislation which is province-wide legislation, including the Public Libraries Act and things like that. Many of them have provincial representation on them as well, so there are conflicts with some of these.

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As I said, the intent of the motion may be reasonable, but we need a fuller discussion of the impact of these sorts of special boards that have some provincial interests and some complexities. Our preference now, and what we're recommending, is to take a look at this maybe at the two-year review time. There's a lot in this bill. There's a lot for the city to deal with, I'm sure, in the next 24 months after this bill is passed; these particular boards will not in any way be impacted.

It also applies to something like, for instance, where the Ombudsman can investigate these boards. Some of these boards have provincial legislation that provides for investigative types of procedures where an Ombudsman would be able to investigate or things like that.

At this point in time, we're not prepared to change the definition until we've had a fuller discussion and fuller consideration of the implications of doing so.

Mr. Hardeman: My suggestion is that we take the advice of the legal branch and hear from the ministry folks. I agree with the parliamentary assistant, save and except that he's speaking to why we should vote against the motion. I need to know why we should support the motion. I need to know what the suggestion is actually suggesting be done. I think that matters. As we go through the rest of the bill, it will have some impact on how we look at some of the other issues in the bill.

The Chair: Are there ministry staff here who could come up and help provide some clarification on this amendment? Could you identify yourself, please?

Mr. Scott Gray: My name is Scott Gray. I work with the legal branch at the Ministry of Municipal Affairs.

This request, as I understand from the city of Toronto—in their minds, it's very clear that a children's aid society is not a local board. I think there's no need to say in the piece of legislation that it's not a local board, so you just get rid of it because it's so clear. Historically, they have been local boards, and for certain purposes they have been local boards, and the ministry responsible for CASs would prefer to leave it in place. They're concerned that there is a possibility that, in some way, for some circumstances, they might be considered local boards and, at this point in time, they don't want that removed.

My understanding from Toronto is that they accept the fact they are not local boards. They don't have jurisdiction over them and they don't want jurisdiction over

them. This achieves that purpose. They just feel they're redundant words in the legislation that they'd like to be rid of.

Mr. Tabuns: Maybe it's because I don't have legal training—I'll plead that for a little while—but as I read the definition of "local board," which includes a board of health and a police services board, and then I go to the section that talks about excluding boards of health and police services boards, I find it unclear. Better minds than mine may well be able to find the clarity in all of this.

I will let my motion from the city of Toronto stand. I understand from Mr. Duguid that the government won't support that. Fair enough.

Mr. Hardeman: Just a final question, and maybe the ministry would be the most appropriate to answer it. This definition section is referred to here, but if you took it out of here would it have any implications in the rest of the act, or just this section?

Mr. Gray: There's a variety of definitions of "local board" and different provisions. What this is saying, in this section, is that we give the city great big, broad, new powers and they can't exercise that with respect to the children's aid society. That's what that's saying.

There are other sections—for instance, the municipal auditor has a responsibility to audit local boards. In that circumstance, you don't have a restricted definition, so it includes, for instance, library boards. It wouldn't include the children's aid society but it would include library boards. So for different purposes you have different definitions of local boards. But this only applies for the purpose of the great big, broad, new power we've given to the city of Toronto. We've said you can govern—

Mr. Hardeman: Well—

Mr. Gray: There are three powers that we've given the city in section 8 that deal with local boards: to deal with the governance structure of local boards, accountability and transparency of local boards, and financial management of local boards. What this is saying, and what that definition is saying, is that you can't deal with those things with respect to the children's aid society or the police services board. The decision is long since made that, to the extent the governance structure of the police services board is changed, that will be done by the Solicitor General under the Police Services Act. It's not going to be done by municipalities, even through it's clearly a local board, generally.

Mr. Hardeman: I guess, having heard that explanation, I would suggest I can't support the motion, because of—and you mentioned that in your explanation—the accountability part, because the children's aid society under this act does not have the scrutiny of the Provincial Auditor either. So if you took it right out of the legislation and you didn't mention it at all, then we'd have some problems with who does become accountable for it. That's what this motion is really trying to do: pretend it doesn't exist.

Mr. Gray: It exists in another context. Public library boards exist in the context of the Public Libraries Act; the police services board in the context of the Police Services Act. The ministries responsible feel that to the

extent there are accountability measures and transparency measures with respect to those bodies, they'll be dealt with in their legislation, not by a general bylaw passed by municipalities.

Mr. Hardeman: But I guess that's my whole point. There's a reason why they're all listed, because we won't want them to exist for this section but we want them to be in the legislation. If you remove them here, it doesn't come up again, so then it's out there. The provincial government doesn't monitor it, and the municipality doesn't either, because it's not a local issue. All of a sudden, it gets lost in the fray. I see absolutely no negative to leaving it in, so I have to agree with the government side and not support this motion.

The Chair: Any further debate?

Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Shall section 8 carry? All those in favour? All those opposed? That's carried.

Section 9 has no amendments.

Shall section 9 carry? All those in favour? All those opposed? That's carried.

Section 10: no amendments.

Shall section 10 carry? All those in favour? All those opposed? That's carried.

Section 11: Mr. Tabuns

Mr. Tabuns: The members of the committee have the text before them.

I move that section 11, as set out in schedule A, be amended by adding the following subsections:

"Definition....

"local matter" means a matter that manifests itself and has impacts primarily within the boundaries of the city."

The Chair: Mr. Tabuns, could I ask you to read it in its entirety into the record, please, everything that you see.

Mr. Tabuns: Okay. Fair enough.

Schedule A to the bill: subsections 11(0.1) to (0.3) of the City of Toronto Act, 2006

I move that section 11 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following subsections before subsection 11(1):

"Definition

"(0.1) In this section,

"local matter" means a matter that manifests itself and has impacts primarily within the boundaries of the city.

"Legislative power re local matters

"(0.2) The powers of the city under this or any other act are powers to legislate with respect to local matters.

"Same

"(0.3) A city bylaw respecting a local matter is deemed not to conflict with an act or regulation described in clause (1)(a) of the province or an instrument of a legislative nature described in clause (1)(b) made or issued under an act or regulation of the province."

The amendment is moved to give the city clear authority to legislate with regard to local matters. The motion seeks to define local matters, and then provide

that city bylaws relating to those local matters will not be found to be in conflict with a provincial act, regulation or instrument of a legislative nature. It strengthens the powers of the city of Toronto.

1630

The Chair: Any further debate?

Mr. Hardeman: Again, I want to quickly ask not just generally what the motion does but what it does other than what the bill presently does—what we're asked to change here.

Mr. Tabuns: What we're asked to change here is to reinforce the power of the city to set its rules within its area of jurisdiction and to say that for strictly local matters, so defined, the city has primary jurisdiction. So if we're dealing with stop signs, with tree bylaws, with matters that affect the residents of the city and don't affect the residents of the province as a whole, the authority and responsibility rest with the city.

Mr. Hardeman: I guess my question really would be, doesn't the act already do that? It's the same as the previous one, the first one we debated. Should we re-emphasize doubly the superiority of the city as opposed to just giving the city the authority they've asked for? Rather than saying, "It's all in there, but just in case you don't interpret it that way, here's another line to make sure that you have to interpret it that way"—how many times do you have to reinforce "You have authority"?

Mr. Tabuns: The request from the city is that it be reinforced. That was their deputation to us on this committee. Their legal staff and their political decision-makers have concluded that they would like that reinforcement to be present in the act.

Mr. Duguid: I think this goes beyond just duplicating a power that's already there. These are always matters of interpretation, but on matters where there's a conflict between provincial legislation and a municipal bylaw, the provincial legislation must supersede that. That's something that's in this act and something that, obviously, the government side supports. Probably all of us at the province support that. It makes sense. Ultimately, the provincial legislation has to be supreme in those types of conflicts.

The problem with this is that it defines as a "local matter" something that "manifests itself and has impacts primarily within the boundaries of the city." It can be interpreted to allow a municipal bylaw to potentially supersede provincial legislation. I think of something like an environmental standard. The city could say, "We're not going to adhere to that provincial environmental standard. For economic reasons, we're going to do less than that." Then you get yourself into a conflict situation.

I'm not sure whether that example is valid or not here. It's open to interpretation as to how far this could go, but it certainly would raise doubts in terms of whether the provincial legislation supersedes the municipal bylaw. That's of concern to us, and as a result, we won't be supporting it.

Mr. Hardeman: Again, I agree with the last comments. One other matter in the bill deals with the transportation issues between Toronto and the airport. This

resolution would imply that that could be solved, because the cab drivers are primarily in the city, and so they could pass a bylaw that would apply in Peel region. I would have a real problem when you have this bill—I don't think it was ever intended to go beyond the boundaries of the municipality. I think that under this, that would be a possibility. You could solve that problem in the city and say, "It's primarily here, so the rest will apply too." I can't support this resolution.

The Chair: Further debate?

Seeing none, all those in favour of the motion? All those opposed? That's lost.

Mr. Tabuns, yours is the next motion.

Mr. Tabuns: I move that subsection 11(2) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out.

The language used in the act frustrates the purpose. It's not language found in the Ontario Municipal Act, 2001, and it could be interpreted as an additional limit on the city's power. The city should at least have the protection of its powers already accorded in the Ontario Municipal Act, which would be to say, strike out this section.

The Chair: Any discussion?

Mr. Duguid: Go ahead.

The Chair: You're going to have to go through the Chair. Don't decide between yourselves.

Mr. Hardeman, I'll let you have the floor.

Mr. Hardeman: Thank you very much, Madam Chair. When we started and we put down the first sections of the bill as to the purpose of this piece of legislation, if I go strictly to the purpose of it, I would agree with this motion because this section does put limits, at the same time recognizing the explanation I hear that it doesn't exist in the present Municipal Act, and the reason it doesn't is because the ability to do these things is prohibited in the Municipal Act, so you don't need to provide restrictions on how you do it.

If you're going to have broad, permissive powers, you do have to have certain limitations as to how far they go. As in the previous motion, I have some concern that if you strike it right out and there's no connection between this and provincial direction, if the city decides to change the direction just for the city, they could, in essence, override legislation and regulations that apply province-wide. I would have concern with that. That's why I wouldn't be supporting this amendment.

Mr. Duguid: The government side won't be supporting this amendment either, for reasons similar to what we talked about before.

The Chair: Any further discussion? All those in favour? All those opposed? That's lost.

Shall section 11 carry? All those in favour? All those opposed? That's carried.

There are no amendments in sections 12 to 19. All those in favour of sections 12 to 19? All those opposed? That's carried.

Section 20: Mr. Tabuns.

Mr. Tabuns: I move that subsection 20(2) of the City of Toronto Act, 2006, as set out in schedule A to the bill,

be amended by adding the following paragraph after paragraph 5:

"5.1 A delegation may specify the manner in which the delegate is required to exercise a delegated power, including requiring the delegate to exercise the power by bylaw or otherwise."

It's saying that the city has the power to constrain those who are delegated power by the city, set the framework within which power can be exercised.

The Chair: Any further discussion?

Mr. Duguid: This is somewhat similar to our motion 7, which I think is the next motion after this. We prefer the wording in motion 7; otherwise, we would have been happy to support this. But we think the wording we have is a little clearer.

The Chair: Any further discussion? Seeing none, all those in favour of the amendment? All those opposed? That's lost.

Mr. Duguid or Mr. Brownell.

Mr. Jim Brownell (Stormont-Dundas-Charlottenburgh): I move that section 20 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following subsection:

"Same

"(3) The conditions and limits referred to in paragraph 5 of subsection (2) may include such matters as the following:

"1. A requirement that the delegate act by bylaw, resolution or otherwise, despite subsection 132(3).

"2. Procedures that the delegate is required to follow.

"3. The accountability of the delegate and the transparency of the delegate's actions and decisions."

The Chair: Any discussion?

Mr. Duguid: Just a short explanation. This is really an additional clarification. When power is delegated, the city can decide how that person must act. It's fairly technical in nature. It ensures the accountability of the delegate and the transparency of the delegate's actions and decisions. I don't know if I need any further explanation than that.

Mr. Hardeman: My question to the parliamentary assistant is, as we go back to the comment about giving authority to the city and their ability to delegate some of that authority for other purposes, why would it be necessary to then clearly define in this new amendment the requirement of how they must act and what they must do? Can't the city make those decisions for itself? It would seem to me very basic: If they're giving the authority they have to another body, they surely should have the authority to decide how that body should function through bylaw.

1640

Mr. Duguid: This act gives the city the ability to delegate. This clarifies to the city—and it's here at the request of the city—that they not only have the ability to delegate but they also have the ability to delegate decision-making and how they would go through the process of that decision-making. So it ensures that the city has a little bit extra—it's quite possible that this

would not be required, but the city wanted further clarification, so that not only do they have the ability to delegate but they have the ability to delegate how decisions will be made.

Mr. Hardeman: It seems to me that the present act sets broader authority for the city than the amendments do, not that there's much difference. But it almost seems like a redundant amendment. When you look at 3, 4 and 5, "a delegation may be made subject to such conditions and limits as city council considers appropriate" would seem to cover everything that's in this amendment. When you add 3 and 4 to that, I don't know how much broader authority one could have than what it presently says. Why would you then outline the process or the procedural bylaw for any appointed delegation committee? Why you would have a procedural bylaw in the provincial act rather than in the bylaw of the city—it's a somewhat redundant solution.

Mr. Duguid: I don't see it as entirely redundant. I'm not sure it's an absolutely essential amendment, but at the same time, it's something the city has requested.

Mr. Hardeman: Thank you. I won one debate, anyway.

Mr. Duguid: I think it's probably helpful in terms of providing greater clarification to ensure that they can not only delegate decision-making ability to a board or a committee but also be able to define exactly what process that board or committee has to go through to make that decision and make sure its transparent and those kinds of things.

Mr. Hardeman: One question on that. The parliamentary assistant talks about making sure the process is appropriate and transparent. With this amendment, is it also possible for the city to make it untransparent? I think it's quite serious. Can they restrict the amount of visibility or the amount of public involvement that these appointing agencies could include?

Mr. Duguid: In response, the appointed agencies would still be obliged to comply with the same rules that council itself has to comply with with regard to transparency and decision-making and those kinds of things. Where, in the legalese of this document, that would be, I don't know. They'd still have to be within the rules of council decision-making.

Mr. Hardeman: A little further on that: Council can go into legal and personnel for certain issues that deal with property, legal issues and personnel issues. Does this amendment provide the opportunity for city council to give the committees that are making the decisions broader ability to go into what we call legal and personnel?

Mr. Duguid: I would hesitate to give you a definitive answer on that. I'd have to take a closer look at the legislation. That may be a question I'd prefer to defer to ministry staff, just to be safe.

The Chair: Did you want an answer from ministry staff? You can all fight to come up here, I'm sure.

Mr. Gray: I'm not sure if I understand the question completely. They can only delegate what they have, so

when council delegates power to anybody, there's a rule in the act: It goes along with any limits or restrictions that are on the power they delegate. So if they're delegating a power to deal with personnel, the same limits that apply to council will apply to whomever they delegate it to.

Mr. Hardeman: The question is, though, if they delegate an authority, in any of their delegateable authority as the committee, could they have a bylaw authorizing that committee to meet completely out of the public view?

Mr. Gray: My answer is no. One of the limits that applies to council now is that if something has to be dealt with in a public meeting, and you delegate to a council committee, that council committee will have to do it in a public meeting as well. They couldn't say, "We have to have a public meeting, but we're going to give it to a council committee, and they don't have to have a public meeting." They wouldn't have that jurisdiction.

Mr. Hardeman: Okay.

The Chair: Any further debate?

Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 20, as amended, carry? All those in favour? All those opposed? That's carried.

Section 21: Mr. Tabuns.

Mr. Tabuns: I move that subsection 21(2) of the City of Toronto Act, 2006, be struck out and the following substituted:

"Restriction re applicable acts

"(2) The city may delegate its legislative and quasi-judicial powers under only this act and the following acts and provisions of acts:

"(1) Cemeteries Act (Revised), sections 2 to 7.

"(2) Fire Protection and Prevention Act, 1997, clause 7.1(1)(c).

"(3) Highway Traffic Act, sections 128 and 137.

"(4) Liquor Licence Act, section 62.1.

"(5) Planning Act.

"(6) Ontario Heritage Act.

"(7) A private act relating to the city.

"(8) Such other acts as may be prescribed."

As I read the act that's here, there is already provision for the provincial government to prescribe acts that may be delegated by the city of Toronto. The city has asked that these specific acts be named at this point so that they can delegate those powers to different bodies within the city to carry forward decision-making on those areas. As the chief administrative officer of the city said to me, "We are dealing with stop sign issues at full council meetings." It doesn't make sense that those sorts of issues take up the time of council as a whole. They should be left to bodies who are delegated to deal with such matters within the city of Toronto.

The Chair: Any further debate?

Mr. Duguid: I don't think that at this point in time we have a great degree of opposition to the idea that some of these acts may at some point be delegated to another body appointed by council for decision-making. We're just not sure specifically why they've named each of these acts. We're not sure whether there would be any other implications.

Through this act, we've allowed ourselves the ability—at some point in time, if we determine that there should be further delegation, we could certainly do that through regulation. We're looking forward to taking a look at these in the two-year review and doing a little bit more homework on these, just to make sure that there are not any provincial implications or public interest issues that we should be considering in moving forward.

We just don't have enough specifics on this to be able to move. Again, it doesn't mean that we wouldn't look at it in the future. As I said, we've left ourselves open with the ability to do this through regulation if we deem it appropriate.

Mr. Tabuns: I would say that what the city has put forward are fairly reasonable changes, and I think that you would not be putting yourself in any peril to go forward at this point. I'd have the motion stand and go to the vote.

1650

Mr. Hardeman: First of all, when you look at the intent of the bill, at some point in time if we have enough delegation, then one really has to wonder why we wouldn't have these boards all elected by the people in order to have accountable people making decisions on their behalf. We seem to be looking to delegate just about everything the city does.

You mentioned the issue of stop signs. I agree that's something—whether it should be there; I'm sure the public works department can use their facts and figures to prove whether there should be a stop sign. I'm not sure you need city council to meet to decide that that's where the stop sign should go. Yet when you look at the overall picture and say we should be able to just delegate all these different areas, what's left that needs city council's decision as opposed to a delegated decision?

It's not that I think city council isn't working hard enough, but I think the people of the city of Toronto at some point are going to want to know whom to hold accountable for the decisions that are being made, and if every one of them is, "It's that other appointed body; we appointed them, so we have to live with their decisions," I don't think that's going to provide for good government.

The one question I would have too is that one of the ones that's listed is the Liquor Licence Act and the issue of bars and the hours of business under the Liquor Licence Act. I guess this is to the legal branch, or maybe the parliamentary assistant can answer: Would the issue of regulating that, presently under the act, have to be done by the full city council? They cannot delegate that authority to implement and enforce that act?

Mr. Duguid: It would be my understanding that city council would have to make that decision, but I'll look to staff. I'm getting nods, so that's confirmed.

The Chair: Any further debate?

Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 21 carry? All those in favour? All those opposed? That's carried.

Section 22: Mr. Tabuns.

Mr. Tabuns: I move that paragraph 6 of section 22 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by striking out "84(1) and (2)."

This amendment would permit the city to delegate legislative powers with respect to the establishment of small business counselling services and with respect to encouraging the establishment and initial growth of small businesses within Toronto, which is not allowed under the act as currently written.

Mr. Duguid: The practice of this would raise some potential concerns to me. I'm not sure if this is what the city is after, but delegating the ability to bonus could lead to, I think, intra-Toronto competition for businesses. You could have Scarborough community council trying to bonus to attract business away from Etobicoke or something like that. I can't help but think that there could be some form of almost a parochial unravelling of the assessment base in the city if we were to allow this.

Again, I'm looking at this and trying to interpret what the potential could be, and I can't help but express some concern that there could be some negative implications if we were to allow that to happen. I can only imagine it would likely be community councils that it could be delegated down to, and I'm not sure I'd be comfortable with that.

Mr. Hardeman: I'm still trying to figure out what it is we're trying to change here. Maybe someone could explain that to me.

Mr. Tabuns: Mr. Hardeman, in section 22 right now, it says, "The city cannot delegate any of the following powers and duties...." In paragraph 6 it refers to subsections 84(1) and (2). If you go to 84, it says, "Without limiting sections 7 and 8 and despite section 82, sections 7 and 8 authorize the city to provide for the establishment of a counselling service to small businesses operating or proposing to operate in the city...."

"Without limiting sections 7 and 8, those sections authorize the city to do the following things in order to encourage the establishment and initial growth of small businesses or any class of them in the city": setting up programs, participating in "programs administered by the crown in right of Ontario."

It's actually just saying that the city would have the authority to delegate such activities to a body other than council as a whole; for instance, to a community council. I don't believe, though, that this would have anything to do with bonusing. This is simply delegation of the authority to counsel small businesses and to assist small businesses within the city of Toronto. It doesn't include the ability to lift levies, charges or fees to those small businesses. That's another matter.

Mr. Hardeman: The question I have is the ability to delegate. Is it the operation of that community advisory, or is it actually setting it up so they can't delegate the ability to go and set up these types of organizations throughout the city on the city's behalf? Could they not appoint that, and then the function can be completed by the people who work within the centre?

Mr. Tabuns: The way it's set up in the act: "to provide for the establishment of a counselling service."

Mr. Hardeman: So the city—

Mr. Tabuns: So in fact you would delegate the establishment of a counselling service to a body within the city rather than retaining the power to set up that counselling service with council as a whole.

Mr. Hardeman: I guess that's really my question. The city can set up the councils and they can go on and do their work. It's just that they can't give a committee the power to, say, look at it and see if it's a good idea to set up these councils around the city and then have them set them up. They actually have to be set up by the city.

Mr. Tabuns: This resolution would actually delegate power with respect to establishment of small business counselling services to a sub-body of the city of Toronto; for instance—and I'm picking it theoretically—if city council said, "Scarborough community council, you have the authority to set up counselling services in your part of the city to help small businesses."

Mr. Hardeman: But again, would it not be possible for the city to say, under the present act without amendment, "Scarborough, you have the power to set up a community advisory service"? They can't do that?

Mr. Tabuns: Apparently not; otherwise, I would assume they would not have requested this amendment.

Mr. Duguid: I guess I have the advantage of having ministry advice on some of this stuff, and they have indicated that it refers to small business programs which provide assistance to small businesses. Again, I guess the major concern—there may be others—is that could potentially involve bonusing for small businesses. I don't think you want to open the door to a potentially unelected—I wouldn't say totally unaccountable, but an argument could be made—less accountable body to make decisions on bonusing types of issues or other potential benefits that could accrue to some local small businesses.

The Chair: Any further debate?

All those in favour of the motion? All those opposed? That's lost.

Shall section 22 carry? All those in favour? All those opposed? That's carried.

There are no motions for sections 23 and 24. Shall sections 23 and 24 carry? All those in favour? All those opposed? Those are carried.

Section 25: Mr. Tabuns.

Mr. Tabuns: I recommend or move that the committee vote against section 25 of the City of Toronto Act, 2006, as set out in schedule A to the bill.

This gives the Lieutenant Governor in Council the ability to make regulations imposing limits and conditions on the power of the city. This is a condition not currently imposed on the exercise of municipal power in Ontario. It gives the province the potential to reduce rather than expand the city's powers and, I think, is contrary to the thrust of the act itself, which has been to expand the authority, responsibility and powers of the city.

1700

The Chair: Any discussion on this section?

Mr. Duguid: This bill is about a permissive approach to powers for the city of Toronto, but it doesn't just walk

away from provincial responsibility as well. It's very important that there are some checks and balances. If this particular section were not to be approved, we could run the risk of having a pretty unaccountable process set up where the provincial interest could not be protected. One of the necessities, I think, of the permissive approach is to ensure that there are some checks. Permissive, yes: You can pass whatever legislation is within your realm of decision-making. But if there's a provincial interest, the province has to be able to step in on behalf of the people of this province, and on behalf of the public in Toronto, for that matter, to ensure that the provincial and public interests are protected.

I'm a little surprised that the NDP is not supporting this particular provision, but so be it.

Mr. Hardeman: I'm kind of torn between and betwixt, I think is the term. Again, as relates to what the minister said this bill was going to do and why the minister introduced this bill, it was because the city of Toronto is a mature government and we have every faith that they will make the decisions in the best interests of the people of Toronto. That's why we need the legislation, which is different and more permissive and more open than the Municipal Act. That says I should support this motion.

Having said that, I believe that in some of the things that were presented to us at committee from people other than the city of Toronto, there's a lot of concern as to whether the minister is right. Not everyone shares his faith in the city of Toronto, and I think this is a part of the act that is required, as the parliamentary assistant says, if, for whatever reason, something does happen that may be good for the city of Toronto but may not be good for all of Ontario. It may be in the provincial interest to prevent that from happening, I think this part of the act does provide the ability to do that.

So I guess I'm voting against this amendment strictly because I believe that there have to be some safeguards put in place to make sure—if the assumption is that we can totally be sure they will always make it in the best interests of everyone in the province, we don't need this protection, but I think at present, at least for the first time out, we need this protection.

The Chair: Can I just clarify that this isn't a motion? It's just a recommendation to vote for or against this section, although it's indicated—

Mr. Hardeman: Then I guess I would just change my wording, Madam Chair. That's how I'm going to vote.

The Chair: Okay. Thanks.

Any further debate? Seeing none, all those in favour of section 25? All those opposed? That's carried.

There are no amendments on sections 26 through 28. Shall sections 26 through 28 carry? All those in favour? All those opposed? That's carried.

Part III, General Powers, Limits and Additions: There are no amendments from section 29 through 77. Shall they carry? All those in favour? All those opposed? That's carried.

Mr. Duguid: Mr. Lalonde?

The Chair: Section 78: Mr. Lalonde.

Mr. Lalonde: I move that subsection 78(1) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out and the following substituted:

“Parking lots

“(1) If the city passes a bylaw for regulating or prohibiting the parking or leaving of motor vehicles on land not owned or occupied by the city without the consent of the owner of the land or regulating or prohibiting traffic on that land, the city may enforce the bylaw on the land but only if a sign is erected at each entrance to the land clearly indicating the regulation or prohibition.”

Mr. Duguid: Just to clarify what this motion is for, in the original bill on page 45, clause 78(1)(a) says, “The owner or occupant of the land has filed with the city clerk written consent to the application of the bylaw...; and

“(b) a sign is erected at each entrance to the land clearly indicating the regulation or prohibition.”

At the city’s request, and we agree, there’s no need to have a provision in there that would require written consent. If the property owner has a sign, it means they’d likely want it enforced. If they don’t want it enforced, they’d likely take down their sign. It’s kind of a minor thing, but it’s a little bit more administrative red tape for property owners to have to have written consent to the city. They’d prefer just to enforce it based on whether the sign is present or not.

Mr. Hardeman: Just a question on enforcement of it. If the ownership of the lot changes hands, is it the act of taking down the signs that takes away the city’s right, or is it as long as the signs are up that the ability to enforce it would remain?

Mr. Duguid: I’m just taking another look at the provision. From what I can see, it would be at the discretion of the property owner. If there are no signs, you can’t enforce it anyway. You can only enforce it if there’s a sign. So if the signs are taken down and a new property owner comes in, and if there’s no sign up, it wouldn’t be enforced. If they choose to enforce the city bylaws, whatever those bylaws may say, then they’d have to put their own sign up, and one would expect the property owner to know that.

Mr. Hardeman: If the ownership changed but the sign wasn’t removed, the enforcement would continue on the new owner?

Mr. Duguid: Correct.

The Chair: Any further debate? Seeing none, all those in favour of the motion? All those opposed? That’s carried.

Mr. Tabuns.

Mr. Tabuns: My motion, Madam Chair, is identical to the government’s motion. I was happy to have voted for theirs, and this would be withdrawn.

The Chair: So you’ll withdraw it. Thank you.

Shall section 78, as amended, carry? All those in favour? All those opposed? That’s carried.

There are no changes to sections 79 through 81. Shall sections 79 through 81 carry? All those in favour? All those opposed? That’s carried.

Mr. Tabuns: section 82.

Mr. Tabuns: I move that section 82 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following subsection:

“Same

“(4) Despite subsection (1), the city may grant bonuses by giving a manufacturing business or other industrial or commercial enterprise a total or partial exemption from levies, charges or fees.”

Madam Chair, I’m always cautious about anything to do with bonusing. I would say that if the city of Toronto was interested in tax holidays or making cash gifts to manufacturers or employers to settle in the city, I would be opposed, but I would say on levies, charges or fees, often to do with development or the initial construction of a business, if the city wants to take that risk in order to attract employment, then I think we should give them that authority.

Mr. Duguid: Similar to an argument I made on an earlier motion, I guess one of the concerns we have about this is you don’t want to get into a situation where municipalities in competition for businesses, in particular manufacturing and industrial businesses and commercial enterprises that all municipalities so covet to enhance their assessment base and provide jobs, start competing at a level that’s going to reduce their own revenues and potentially impact the taxpayer and ultimately the assessment base. So Toronto will have the ability to bonus through a community improvement program or a business incubator program without provincial approval, but to go further than that, we think, could be troublesome and could provide an unfair advantage to the city in the competition for these kinds of enterprises.

1710

Mr. Hardeman: I agree with the parliamentary assistant. I’d just go a little further and suggest that this is one of the areas where what may be good for the city of Toronto may not be good province-wide. In fact, if the city of Toronto started having the authority to bonus—and there is no other word for this but “bonusing”—it would seem to me that if it worked for the benefit of the people of Toronto, it would be to the detriment of the rest of the province. Then of course they would have to be able to do the same thing, and all of a sudden next year they’re all slipping the other way and no one benefits, and the taxpayer just did a lot of bonusing that no one really benefited from.

So if, for whatever reason, they started doing this, I would see this as likely one of the first places where the province would have to step in with a regulation taking away the right to bonus, because this is what would happen. If on one side of Steeles Avenue they can’t get an exemption from development charges and on the other side of Steeles Avenue they can, we know which side they’re going to build on. I think this would be something that would have a negative reaction across the borders all around the city of Toronto. Everything except on the south side, where it wouldn’t make much difference.

The Chair: Mr. Tabuns, did you have any further debate?

Mr. Tabuns: No further comment.

The Chair: All those in favour of the motion? All those opposed? That's lost.

Shall section 82 carry? All those in favour? All those opposed? That's carried.

Mr. Tabuns: section 83.

Mr. Tabuns: A minor amendment, Madam Chair.

I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following headings before sections 83 and 84 respectively:

"Grants

"Small business development"

As written, section 83 doesn't deal with economic development and is better defined by the term "Grants" preceding it. Section 84 is better defined by the title "Small business development" preceding it.

The Chair: Any discussion?

Mr. Duguid: I think this is just a drafter's disagreement as to what heading should be in place and what shouldn't be. It appears to be purely cosmetic. I don't know why they're asking for this change, and we're not going to support it simply because I don't think it really adds anything to the bill at all. It's really cosmetic in nature.

The Chair: Any further debate?

All those in favour of the motion? All those opposed? That's lost.

Mr. McNeely.

Mr. Phil McNeely (Ottawa-Orléans): I move that subsection 83 (2) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following clause:

"(c.1) to provide for the use of officers, employees or agents of the city by any person, upon such terms as may be fixed by council;"

The Chair: Any discussion? Mr. Duguid, did you want to speak to this?

Mr. Duguid: Sure. Just by way of clarification, what this does is provide clarification on granting powers. The city had requested that this be in. I guess it clarifies that the activities mentioned in the amendment are included in the power to make the grants.

Mr. Hardeman: I think that explanation was fairly clear. This is just an addition. They cannot only give cash and other services; they can give manpower too. Is that right?

Mr. Duguid: That's my understanding.

The Chair: Any further debate?

All those in favour of the motion? I think that was unanimous. That's carried. We haven't had one of those yet.

The next motion, I believe, is a duplicate of—

Mr. Tabuns: Right, so I withdraw it, Madam Chair.

The Chair: You withdraw it. Thank you.

Shall section 83, as amended, carry? All those in favour? All those opposed? That's carried.

Sections 84 and 85 have no amendments. Shall sections 84 and 85 carry? All those in favour? All those opposed? They're carried.

Mr. Hardeman: section 86.

Mr. Hardeman: I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 86:

"Restriction on licensing power

"86.1 Despite any other provision of this act, the city is not authorized to provide for a system of licences with respect to a business or activity if a licence is required under another act to engage in the business or activity."

We heard a lot of deputants who came before the committee talking about the issue of being able to license and the much broader authority that the bill has for the licensing of activity within the city than is presently available in the Municipal Act. The concern overall was that generally they didn't believe the city should be using licensing as a way to supplement their overall city expenses but that the cost of the licensing provision should be related directly to the cost of the licensing to regulate the business rather than as a way of raising funds.

First of all, I'd say there were a lot of people who came forward and said, "We are already licensed by the province one way or another" or "We have a licensing structure that already exists." This motion would suggest that if it's already a business licensed and controlled by the province, they would not be able to just arbitrarily charge a licensing fee when there was actually no licensing taking place for that industry because the total licensing would be under the jurisdiction of the province.

I would use the example of—and it wasn't used, I don't think, in the presentation—professionals such as doctors. The city would not be able to attach a licence to a doctor's office just for the sake of the fact that they're in business within the city. They're already covered by the province, and they shouldn't be licensed by the city.

Mr. Duguid: Madam Chair, if my reading of this is that it's an attempt to ensure that if the province licenses a particular activity, the city then can't step in and license them, so there's not a duplicate licensing process. I understand the intent of that. I think if there's a public interest or a provincial interest and the city were to engage in licensing a particular field, endeavour or whatever, the minister has the regulatory ability to prohibit that, to prevent that from happening. Certainly if it were in the public interest for the minister or the government to step in, they would.

The concern I have here is that there may be circumstances—and we'd probably have to really give it some thought, but it's an idea. Perhaps a cab driver has a driver's licence. Does that then mean that the city—and this may not be a good example—would not have the ability to license a cab driver? There may be other circumstances like that where it may be appropriate for there to be dual systems of licensing, where the province may license one aspect of something and the municipality another aspect.

So we won't be supporting this, but keeping in mind that we have listened carefully to a number of concerns being raised in this area, if it is deemed to be not in the public interest, this is something that certainly may be considered when the regulations come forward. There

have been some industries or fields that have made some representation to us. No decisions have been made on any of those yet, but we could accommodate some of those concerns, potentially, in the regulations.

Mr. Hardeman: I think the amendment is more explicit than was portrayed by the parliamentary assistant when he referred to a cab driver being licensed by the province as a driver and that this resolution may then prohibit the city from licensing the cab. It's quite clear that it is "with respect to business or activity if a licence...." And the licence refers to the activity, which is the cab, not driving. We all have a driver's licence, but we're not all cab drivers. I think it's directly related to the double licensing that you referred to first, the double licensing of any activity. If I need a provincial real estate licence to practise realty, can the city also charge me a levy for being a realtor in the city of Toronto? I think it's really the type of activity, when you're licensing the person or the business and then have two licences.

1720

Again, going back to the person driving the cab: Can the city impose another driving restriction on a cab driver other than his driver's licence to drive it? We understand they can license the cab, but can they license, and request more licences, for things that are presently totally licensed by the province? I think this prevents that from happening. It's one of these things where we can say, "If it happens, we will do something about it." If that's the intent of the government, then there's no reason not to put it in the legislation and not wait for the brick to fall and then solve the problem. Solve the problem now so we know it can't happen and the city knows very clearly that if they already hold a provincial licence they can't be licensed again just to raise funds.

Mr. Duguid: Just to clarify, we will certainly be taking a look at these issues when we put the regulations for this bill together. No decisions have been made yet in terms of some of the representations we've heard; for instance, from the real estate industry. That's something that could be accommodated potentially in the regulations, but we would still have concern that this could be overly prohibitive. There may be areas that could potentially require duplicative licensing regimes. I can't think of any off the top of my head, but there may well be.

We reserve the right, and the minister has the ability to ensure, that if the city were to move in an area that's contrary to the public interest or the provincial interest, we could certainly move on that and prevent it from happening. I don't anticipate that's going to be necessary in the end anyway, but to put it in legislation now might be overly restrictive.

Mr. Hardeman: In the total thrust of having legislation and then coming up and saying—and I know, and said earlier, that we need protection for regulations or for the province to be able to step in for the provincial interest. I don't believe it's appropriate to say, "Don't worry about any exclusion. Don't worry about the eventualities of what may happen, because we have the ability through the ministry regulation to change the

direction the city is going if it's going in the wrong direction in our opinion." I really have the concern that if that's the principle of this bill, then I don't know why it's such a big bill. I don't know why we didn't just say, "City of Toronto, we have a bill here. It's a one-pager. Do as you like, but remember that when you do what we don't like, we're going to pass a regulation to prevent you from doing it." That's really all that's required, because what you're really saying here is, "We don't believe that we should be double-licensing. If it's provincially licensed, we don't believe that the city should license, but we're not really sure. After we get this bill passed, we'll sit down and we'll discuss it in the minister's office and we'll decide what we think is good for the city of Toronto, and then we'll set the rules in place after the fact."

I think the people of Toronto and the people of the province have a right to know whether this is something that the province supports or doesn't support. Does the province believe we should have in this legislation a regime that allows the city to license activity in the city that is presently licensed by the province? If not, then we should put something in place in the act that says no, that's not what we intend. You can still override it if it goes beyond where you thought it was. That's what that Henry VIII clause is in there for. I just can't believe that we would say, "Don't worry about making any changes, because once we get this on the ground we've got the power to change anything that's in the bill. So don't worry. We can make it all work the way we want."

This is an important process, to make sure that we're doing it the way the people of Toronto want it. I don't think we're going very far in that direction.

The Chair: Any further debate? Seeing none, all those in favour of the motion?

Mr. Hardeman: A recorded vote, Madam Chair.

Ayes

Hardeman.

Nays

Brownell, Duguid, Lalonde, Rinaldi, Tabuns.

The Chair: That's lost.

Mr. Tabuns.

Mr. Tabuns: I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 86:

"Licensing absentee landlords

"86.1 (1) Without limiting sections 7 and 8, those sections authorize the city to provide for a system of licences with respect to absentee landlords and,

"(a) to provide for a system to track the absentee landlords; and

"(b) to require absentee landlords to post a bond to be used for property upkeep.

"Same

"(2) Section 86 applies, with necessary modifications, with respect to the system of licences under this section."

Different parts of the city have had different experiences with absentee landlords. As a former councillor in the downtown area, I had to deal with absentee landlords who did not pay attention to the properties, allowed a fair amount of decay and in some instances allowed crack house operations to go on on their properties. The city of Toronto has concerns about absentee landlords and wants to have more authority to track them and take action, make sure that their properties are properly maintained so as not to cause degradation in the neighbourhood, and thus asked for this power.

I think it would be in the government's interest, frankly, to support them on this, because all of us from time to time in our own jurisdictions have to deal with houses that are very disruptive. Having the authority to do that in the city of Toronto may well help MPPs in other parts of the province to say, "Those powers are useful to municipal governments to deal with disruptive houses."

Mr. Duguid: We will not be supporting this particular motion. The city of Toronto now has the power to license absentee landlords, and they could accomplish this policy objective through licensing. But to suggest that an absentee landlord should post a bond with the city is pretty draconian.

I understand that absentee landlords are a problem. They certainly are in my own neighbourhood, and we've had to deal with them for some time. But they're also an important piece of the rental housing market. The last thing you'd want to do is discourage people from renting by saying, "You've got to pay the city up front in case you break the law down the road."

The city has powers, and most communities aren't afraid to use them—some probably are less aggressive than others—to track the property owners through the property tax rolls, so they know who owns the property, and to recover any costs they may incur through taxes. They have the ability to do that now, and I think that's adequate. Some cities may be more reluctant or less reluctant than others to use that tool, but the tool is there nonetheless. When it needs to be utilized, it certainly can be.

Mr. Hardeman: I had overlooked it when I was reading the bill in total; I have concerns with the licensing of landlords, absentee or otherwise. We all know that in rental housing, the cost of whatever it costs to do that is going to go back to the people who live in it. The people who live in these apartments are already paying taxes to the city up to four times as high as they would if they owned the building themselves, so I believe that they're paying their fair share.

Looking at the bill and the ability to raise money on behalf of the city and their licensing structure, in not having to relate the cost of the revenue received from licensing—you don't have to relate that to the cost of the licensing process—they could all of a sudden tack a massive licence fee on rental accommodations and that would all go to the tenants. We have solved the budget crunch but, to me, not in a very adequate and sustainable

way. Really, I think this is a poor place to look for further revenue for the city.

I also think it would become almost impossible for the city to identify absentee landlords as opposed to non-absentee landlords. I would think that in the vast majority of rental accommodations in the city of Toronto, the owner of the building does not live in the building. So does "absentee" mean that you're out of the city, you're out of the province, you're out of the country or you're off the continent? What is "absentee"? I think it would be totally unrealistic to administer "absentee" as it applies to landlords. I'm opposed to having a licensing system for landlords so the tenants get to pay even more of the city's share of the cost. I think this motion would make that even worse. I don't think you could define who should pay the licence and who shouldn't.

1730

Mr. Duguid: Just to clarify, this is not something that could be used as a cash cow by the city. The licensing provisions need to be done on a cost recovery basis, so it's not something the city could use to raise revenues to use in other areas.

I believe their request has been to use the licensing provision to hire more property standards inspectors to be able to better inspect units. It's actually there at the request of tenants and tenant advocate groups who have been active in trying to encourage the city to go that route. But Mr. Hardeman is quite right in his assessment that the tenants would end up paying for it themselves.

Again, this would be a city decision one way or another; it's not our decision. We're just giving them the ability to determine whether they would want to license landlords and utilize the revenues from that as part of an enhancement of an inspection regime for those particular units.

Mr. Tabuns: I'd just like to say, generally speaking, that an absentee landlord is a landlord who does not live on the property that has rental units in it. If you have a house and you're renting the upstairs, you're not an absentee landlord. If you don't live on the property, you're an absentee landlord. It doesn't relate to whether you're in Toronto, Ontario, Canada, whatever.

I think Mr. Duguid has been pretty good in pointing out that there is an interest on the part of tenants and of homeowners to see that absentee landlords actually run their properties well. As a city councillor, my problem was far less with landlords who lived on the site. They tended to have a greater interest in making sure the properties looked good, were well maintained and were not disruptive.

In any event, I think what the city has put forward is reasonable. I'd urge you to vote in favour of it. My count of heads is not encouraging to me.

Mr. Hardeman: Just a question on the comments made by the parliamentary assistant about the requirement to match the expense of the cost of operating the system to the cost generated by the licensing: Is that part of Bill 53?

Mr. Duguid: Yes. My understanding is that the ability to license is subject to cost recovery. The fees they can

charge are subject to cost recovery. I couldn't point out exactly where in the bill that is, but my understanding is that it's part of this bill.

Mr. Hardeman: I would appreciate finding where that is.

The Chair: Staff is looking. Are we going to get an answer right away?

Mr. Gray: The authority for fees and charges under the proposed act are in part IX. There isn't a specific reference in that part that says they're limited to cost recovery. What we're relying on is the court's interpretation of fees and charges power, and they've been very clear in saying that the fees and charges power doesn't authorize a tax. If it exceeds cost recovery in any significant way, it's an unauthorized tax and isn't authorized by the words "fees and charges."

Mr. Hardeman: So it's based, then, on the court's interpretation of fees and licences, as opposed to a part of the act that says that there must be an accounting for it, that there has to be a match between the revenues and the expenses.

Mr. Gray: Essentially the courts have said that that's what a fees and charges authority means. If you want to authorize a tax that can raise general revenue, you'd better say it. If you don't say it, they're going to say that it's limited to a fee and charge, which is cost recovery.

The Chair: Any further debate? Seeing none, all those in favour of the motion?

Mr. Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Brownell, Duguid, Lalonde, McNeely, Rinaldi.

The Chair: Mr. Hardeman, did you—
Interjection.

The Chair: That's lost.

Shall section 86 carry? All those in favour? All those opposed? That's carried.

There are no amendments from section 87 through 103. Shall they carry? All those in favour? All those opposed? That's carried.

Mr. Lou Rinaldi (Northumberland): I move that clause 104(3)(a) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out.

The Chair: Any debate?

Mr. Duguid: This probably needs some explanation, and I'll do my best. Currently, boards and other municipalities are exempt from the city's tree bylaws. What this does is remove that exemption, so that if another municipality owns property in the city of Toronto or if a board—probably a board of education—owns property in the city of Toronto, they still have to comply with the city's tree bylaw.

My personal experience is that the board of education, by and large, did that; I've been through processes

myself with them. But it may have been certainly due to convention more than necessity, so that's why this is here.

Mr. Hardeman: I guess the question would be, if it's in the bill presently that the municipality or any of its boards do not have to comply, why is it deemed necessary that if it is the school board, they should comply? Why would they not be exempt the same as the municipality itself? They represent the city of Toronto too.

Mr. Duguid: What this provision deals with is property owned within Toronto by municipalities outside of Toronto or, I believe, the board of education; I'll have to just check, but I believe it's the board of education as well. Taking out this section ensures that they will not be exempt from provisions under the tree bylaw of the city, as per the city's request.

Mr. Hardeman: I guess the question would be, why would they not be exempt?

Mr. Duguid: Why would they not be exempt?

Mr. Hardeman: Yes.

Mr. Duguid: Good question. I think that it may be something that's just automatically been there for some time. There really should be no reason to exempt them. I think, as we go outside of Toronto, I'd have to check the Municipal Act to see whether in fact that exemption may apply the other way around as well. It may be something we have to consider when we deal with the Municipal Act this spring too, but I may be taking myself out on a limb on that. If staff have anything else to add—is that pretty much it?

Mr. Gray: It's a general exemption now in all municipalities. Other municipalities and local boards of municipalities do not have to comply with the tree bylaws. The city of Toronto made a request: "We should be able to decide. There are some circumstances under which other municipalities own land in our city, and they shouldn't be able to cut down trees without city regulation." A decision was made, yet that's reasonable.

Mr. Hardeman: That's my problem: The standard across the province is what's presently in the act, which is that every municipality and their local boards are exempt. In fact, they're not only exempt from the tree bylaw; they're exempt from paying taxes in that municipality. That's a pretty basic exemption. So it would seem strange to me that all of a sudden we would put an act in place where they don't have to pay taxes in Toronto if they own property for municipal purposes, but they do have to apply and are controlled as to whether they can cut down a tree on that property. It seems rather a strange way. It would seem to make more sense for the city to put in there that they must pay taxes, as opposed to having to comply with the tree bylaw.

1740

Mr. Duguid: Again, I'm going out on a limb here, pardon the pun.

Mr. Hardeman: Well, make sure it's not the tree they're cutting.

Mr. Duguid: I'll try not to.

An example: I thought about this one when I saw this, and as we deal, as I said, with the Municipal Act later on, maybe make a note that this might be something we want to look at. The city of Toronto owned Keele Valley. Should they be exempt from tree bylaws in that particular municipality? I think it's probably worth talking about, but I think they should have to comply. When you own property in another municipality, it shouldn't give you the ability just to clear-cut, which is currently what exists. It seems like a reasonable request from the city and, as I said, something we may want to take note of, as it might apply across the province.

The Chair: Any further debate? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Tabuns, I believe the next motion is yours, and it seems to be a duplicate.

Mr. Tabuns: I agree, and it should be withdrawn, Madam Chair.

The Chair: Thank you.

Shall section 104, as amended, carry? All those in favour? All those opposed? That's carried.

The next motion: Mr. Brownell.

Mr. Brownell: I move that clause 105(2)(a) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out.

Mr. Duguid: This is a similar motion to the previous one, except that it deals with the dumping of fill, the removal of topsoil or grade alterations. Other municipalities and boards will now be subject to the city's bylaws on site alteration, if this carries. It's a request from the city, and we agree that they should be.

Mr. Hardeman: Just very quickly, I guess my position is the same on this one as on trees. I would think this is a rather strange place to make the change from where the responsibility between one municipality and another applies. The question would be, if it doesn't exempt us, is the province going to fall under the same conditions?

Mr. Duguid: No.

The Chair: Any further debate? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Tabuns, I believe the next one is a duplicate.

Mr. Tabuns: So true. It should be withdrawn.

The Chair: Withdrawn. Thank you. You both had good ideas at the same time.

Mr. Duguid: Great minds think alike.

The Chair: Exactly.

Shall section 105, as amended, carry? All those in favour? All those opposed? That's carried.

There are no amendments to sections 106 and 107. All those in favour of those sections? All those opposed? That's carried.

Interjection.

The Chair: Mr. Tabuns, I'm advised that you're adding a section after section 108, so we can vote on section 108 before we get to your motion. Shall section 108 carry? All those in favour? All those opposed? That's carried.

Mr. Tabuns,

Mr. Tabuns: I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 108:

"Fire prevention sprinklers

"108.1(1) Without limiting section 7 and 8, those sections authorize the city to pass a bylaw requiring and governing the installation of fire prevention sprinklers in new residential buildings.

"Same

"(2) A bylaw under subsection (1) applies in the city despite section 11 and the Building Code Act, 1992."

This allows the city to require fire prevention sprinklers in new residential buildings without conflicting with provincial legislation.

The Vice-Chair (Mr. Jim Brownell): Any debate? Seeing no further debate, all in favour of this motion? Opposed? The motion is defeated.

I see no amendments to sections 109 through 113. All in favour of sections 109 to 113? Opposed? Carried.

Next, we have an NDP motion.

Mr. Tabuns: I'm just wanting to make sure that my numbering is good here. I have an additional motion beyond those that were put in the package. I just want to make sure it's coming after this one. Yes? Fine. Then I've counted correctly.

I move that section 114 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following subsection:

"Peer review

"(4.1) As a condition of site plan approval, the city may require the owner of land to submit plans and drawings for peer review by a design review panel composed of such persons as the city considers advisable."

This is a motion that will give the city more control over building design in areas where site plan approval is currently in place.

The Vice-Chair: Any further debate or comments?

Mr. Hardeman: I guess I need some clarification. To the mover of the motion: This is going to apply to an area of development that has all the site plan approvals now, and the city could go back and ask them for further information, leading with what they can develop?

Mr. Tabuns: I think, Mr. Hardeman—

The Vice-Chair: Mr. Tabuns.

Mr. Tabuns: Sorry, Mr. Chair. Through you, when the city goes forward with site plan approval, this would not be on top of the current site plan approval but in conjunction with or the method by which site plan approval is reviewed.

Mr. Hardeman: With that, I guess I would have to ask the staff of the legal branch: Is the requirement or the suggestion that "the city may require the owner of land to submit plans and drawings for peer review by a design review panel composed of such persons" not already part of the plan that the city could include as to what they consider a complete application?

The Vice-Chair: Please give your name.

Mr. Irvin Shachter: Good afternoon. My name is Irvin Shachter, from the legal services branch of municipal affairs.

The motion is not necessary. There are two aspects. The first is that it's an advisory panel, and the city will already have the authority to set up such advisory panels through its administrative process. As well, as part of the site plan approval process, the city will already have the authority to require the owner to submit such plans and drawings for peer review by such an advisory panel.

Mr. Hardeman: Thank you very much. The resolution really is quite redundant, if you look at what is already available to the city.

The Chair: Any further debate? Seeing none, all those in favour of the motion? Those opposed? That's lost.

We need the next one distributed; it's a new motion, 24a. Mr. Tabuns, when everybody gets it, could you read it into the record, please?

Mr. Tabuns: You want me to wait until everyone gets it?

The Chair: Yes, please.

1750

Mr. Tabuns: Everyone has it, including staff? Good.

I move that paragraph 2 of subsection 114(5) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by striking out "and" at the end of subparagraph iv, by adding "and" at the end of subparagraph v, and by adding the following subparagraph:

"vi. construction standards relating to energy efficiency and conservation."

As you have heard numerous times in the House, and as you heard in the government question to the Minister of Energy today, there are concerns about the supply of electricity to the city of Toronto. There's tremendous interest in the city of Toronto in ensuring stability and security of energy supply, and thus an interest in making sure that the buildings in that city operate as efficiently as possible.

The city of Toronto in the past, in the early 1990s when I was on council, actually used its zoning powers to require building developers to meet a higher standard of construction, a higher efficiency level of construction, than was at that point required by the Ontario Building Code. In fact, it was the efforts on the part of the city of Toronto to push that higher code that eventually led to revision of the Ontario Building Code so that the standards the city was setting became the standards across the province. I would say that the city, not out of virtue but out of necessity, has tended to push forward on these issues more than other jurisdictions.

Your government, Madam Chair, understands the necessity of ensuring that Toronto has power. We disagree on methods, perhaps, but we agree on the need for power. The city of Toronto feels that a way that's environmentally and economically quite viable is to have greater authority to set energy efficiency and conservation standards. That's the reason I'm moving this motion.

The Chair: Any discussion?

Mr. Duguid: I know we're being very flexible in terms of the ability of the city to have standards for green

roofs. But beyond that, when we're talking about construction standards related to energy efficiency and conservation, I think there really needs to be a province-wide initiative. You don't want one-offs happening across the province; you want some form of standardization.

Perhaps it's something we could review in a couple of years, but at this point in time, certainly, I'd be a little concerned about supporting it, in that I'm not sure exactly what the city would have in mind, and I'm not sure what the repercussions could be to our building community here in the city of Toronto or to the cost of housing overall.

Mr. Tabuns: The repercussions for the city of Toronto would be reduced energy demand, lower operating costs, a better environment and, frankly, an expansion of the skills of the construction industry in this city and in this province. The city's experience at the beginning of the 1990s with the requirement for a higher energy efficiency standard was not at all negative. In fact, it meant that buildings that came in used less power than they otherwise would have, meaning, over the long term, more comfort for tenants, more comfort for owners and lower operating costs, which is something that I think everyone in this room would be supportive of. I think the argument is a fairly powerful one.

Mr. Hardeman: I don't disagree with the argument and the need for more efficient construction standards, but I think this does relate to the presentations. We heard from a lot of deputants about the green roof issues—the environmental issues there—and how much ability the city would have to go beyond the requirements in the building code. During those hearings and the presentation from government, it was assured that this was in there as the green roofs, totally separate, but there would be no ability for the city to go beyond the present building code standards that will be applied throughout the province. I think this would open it up such that the building code would only be a floor standard for the city. They could then impose anything that they deemed appropriate in addressing conservation and energy efficiency. I think this would open a door that would lead into the concerns expressed by so many of the people who build and who have to compete with the standard here to where they would live in the surrounding areas. The choice between a house in Toronto or a house in Peel region—if all of a sudden you make it twice as expensive or a third more expensive to build a house in Toronto, it's going to make it very difficult for the people to buy homes in Toronto. I can't support this because of that, not because I don't think we shouldn't build energy conservation in it, but I think, as the parliamentary assistant suggests, it has to be province-wide in order to make it work.

Mr. Tabuns: I don't want to belabour this point, but I do want to say something for the record. The federal government, in its commercial building improvement program, found, in working with building developers, they could cut long-term energy use in buildings by 25% to 35% with no increase in capital cost. By cutting the energy demand in the buildings, in the envelope, they

could reduce the size of mechanical installations for heating and cooling. In fact, an intelligent program that did change the way we approach energy use could give us the benefits without increased capital costs in many cases. I would say, frankly, that in most cases increased capital costs are more than paid for by reductions in energy use, something that's of consequence to the city as a whole. Thank you for the opportunity to stand on the soapbox, Madam Chair.

The Chair: You're welcome.

Mr. Lalonde.

Mr. Lalonde: Really, I don't disagree with the energy conservation, but this subsection, 114(5), refers to site plans and doesn't refer to building codes. This is why I don't think this could be included in that section. Again, that section refers to the site plan agreement and not the building code.

Mr. Duguid: To my colleague Mr. Tabuns—who is very comfortable speaking on this particular issue, I can tell; he seems to have a lot of knowledge on it—we are reviewing the building code. We're looking at putting more energy-efficient code standards in there. That's certainly something he'll want to keep his eyes on in the coming months, because that's something that's under way. We'll look forward to his further input on that.

The Chair: Any further debate?

All those in favour of the motion?

Mr. Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Brownell, Duguid, Hardeman, Lalonde, Rinaldi.

The Chair: That's lost.

We have a new motion, 24b. Mr. Tabuns.

Mr. Tabuns: I move that paragraph 3 of subsection 114(6) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding at the end "except construction standards relating to energy efficiency and conservation."

Madam Chair, I think we've all made the arguments on this one. I have no new arguments. My suspicion is that those oppose it have no new arguments. I call for a recorded vote.

The Chair: Any further debate?

All those in favour of 24b?

Ayes

Tabuns.

Nays

Brownell, Duguid, Hardeman, Lalonde, McNeely, Rinaldi.

The Chair: That's lost.

Mr. Duguid, I believe, 25 is yours, or somebody's—it's a government motion.

Mr. Lalonde: It's NDP.

Interjection.

The Chair: Sorry. I actually know what I'm doing, but I have to explain it to you. Number 27 is actually number 25, so it is a government motion.

Interjection.

The Chair: Because of the renumbering of the previous motions—I actually know what I'm doing.

Mr. Duguid: Madam Chair, perhaps I can assist. We are quite happy to support the NDP motion on this. It's identical to ours. We'd be happy to support it, so if you want to take it—

The Chair: So you would like to withdraw number 25?

Mr. Duguid: Yes, that would be fine.

The Chair: Then I'll let Mr. Tabuns read the motion into the record.

Mr. Tabuns: I move that section 114 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following subsection:

"Drawings for residential buildings

"(8.1) Despite the exception provided in paragraph 2 of subsection (5), city council may require the drawings mentioned in that paragraph for a building to be used for residential purposes containing less than 25 dwelling units if the proposed building is to be located in an area specifically designated in the official plan mentioned in subsection (2) as an area in which such drawings may be required."

The Chair: Any discussion on this item? Any debate? Mr. Hardeman, you're ready to vote? That's good. I like people who are ready to vote.

All those in favour of the motion? All those opposed? That's carried.

The next motion: Mr. Tabuns. You're on a roll.

Interjection.

The Chair: You have to wave the right way; otherwise, I don't know it's a question.

So 26 is now 27, I think—at the top of my page, in case you're confused, which is 114.1 It's an addition, so we can vote on section 114.

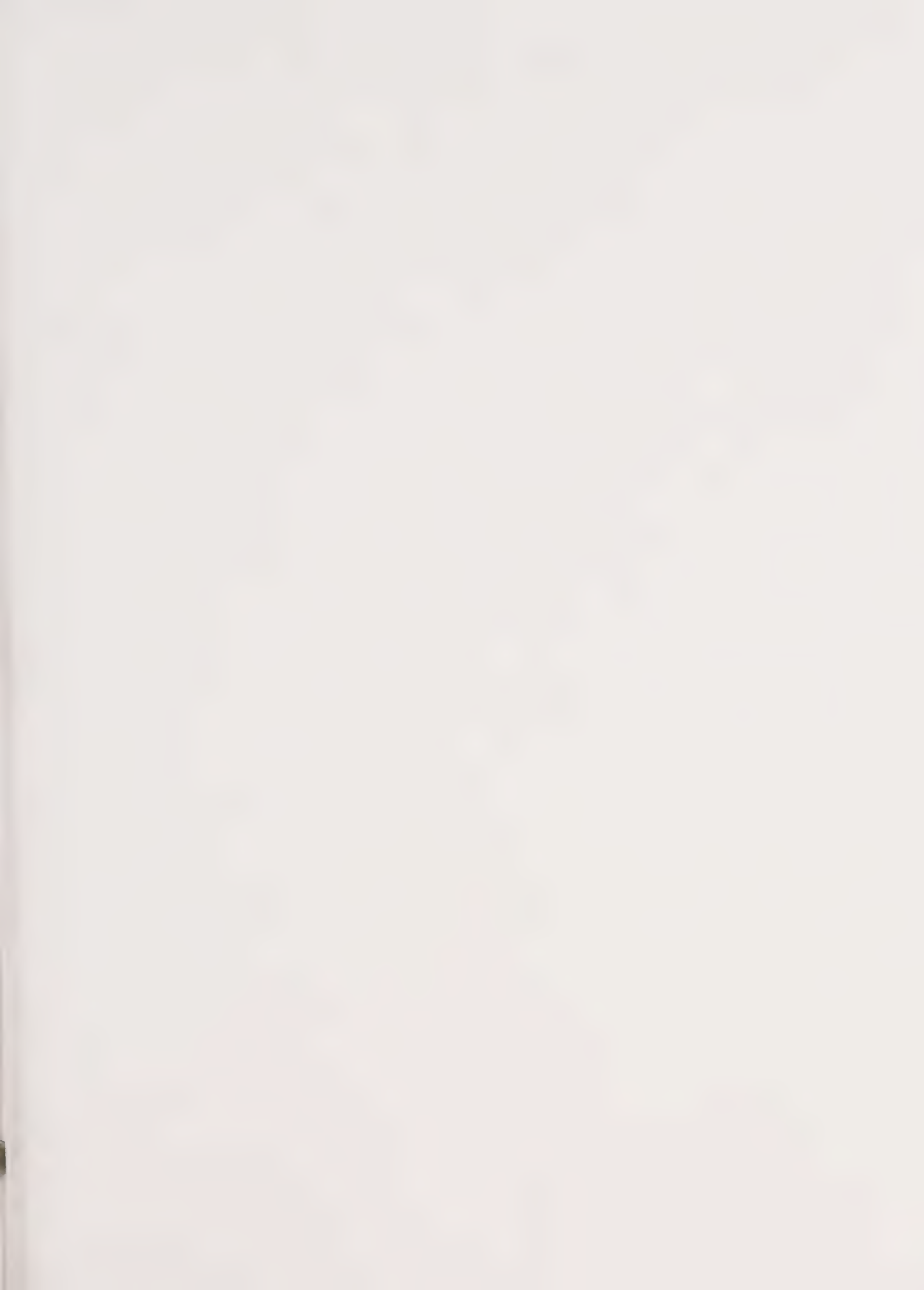
Can I get a recommendation from committee that section 114, as amended, be carried? All those in favour? All those opposed? That's carried.

The House division bells were heard to ring.

The Chair: Having heard the bells, I'm going to say that we have not completed clause-by-clause. We will return at 114.1. Mr. Tabuns, you'll have the floor when we come back.

We stand adjourned until 3:30 p.m. on Wednesday, May 17, 2006.

The committee adjourned at 1802.



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Standing committee on general government

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for a Stronger Ontario Act, 2006

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 17 May 2006

Mercredi 17 mai 2006

The committee met at 1552 in room 151.

APPOINTMENT OF SUBCOMMITTEE

The Chair (Mrs. Linda Jeffrey): Good afternoon. The standing committee on general government is called to order. We meet today to resume clause-by-clause consideration of Bill 53, the Stronger City of Toronto for a Stronger Ontario Act.

We have a motion to appoint a member to our subcommittee, and I believe Mr. Lalonde had the motion. Could somebody move the motion with regard to Mr. Tabuns? Mr. Rinaldi, thank you.

Mr. Lou Rinaldi (Northumberland): I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or on the request of any member thereof, to consider and report to the committee on the business of the committee;

That the subcommittee be composed of the following members: the Chair as chair; Mr. Rinaldi; Mr. Ouellette; and Mr. Tabuns;

That the presence of all members of the subcommittee is necessary to constitute a meeting; and

That substitutions be permitted on the subcommittee.

The Chair: Any discussion?

Mr. Peter Tabuns (Toronto–Danforth): Maybe because I'm new here, but why would we not have a Conservative representative on the subcommittee as well?

Mr. Rinaldi: We do. Mr. Ouellette.

Mr. Tabuns: Oh. I haven't seen Mr. Ouellette around the table.

The Chair: On occasion people have been subbed on, so you're never quite sure who the subcommittee is, but, as a rule, this is the individual who normally should be on that committee.

Mr. Tabuns: Fair enough. Thank you, Madam Chair.

The Chair: You're welcome.

All those in favour of the motion? All those opposed? That's carried.

STRONGER CITY OF TORONTO
FOR A STRONGER ONTARIO ACT, 2006LOI DE 2006 CRÉANT
UN TORONTO PLUS FORT
POUR UN ONTARIO PLUS FORT

Consideration of Bill 53, An Act to revise the City of Toronto Acts, 1997 (Nos. 1 and 2), to amend certain

public Acts in relation to municipal powers and to repeal certain private Acts relating to the City of Toronto / Projet de loi 53, Loi révisant les lois de 1997 Nos 1 et 2 sur la cité de Toronto, modifiant certaines lois d'intérêt public en ce qui concerne les pouvoirs municipaux et abrogeant certaines lois d'intérêt privé se rapportant à la cité de Toronto.

The Chair: Committee, we were on section 114 of the bill and we had just voted on that section. We now have an NDP amendment on page 27 that creates a new section, 114.1. Mr. Tabuns, it's a new 27.

Mr. Tabuns: Sorry, Madam Chair. You're sure that page 26—

The Chair: It was old 26 and now it's 27. But it's 114.1.

Mr. Tabuns: My text is different from the text on new 27—oh, sorry. Yes, I see what you're getting at. Okay.

I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 114:

“Holding provision bylaws

“114.1(1) This section applies if the city passes a bylaw under section 34 of the Planning Act respecting the use of the holding symbol in connection with the use to which lands, buildings and structures may be put in the future.

“Conditions

“(2) As a condition of removing the holding symbol with respect to land, buildings or structures,

“(a) the city may require an owner of the land to enter into an agreement with the city relating to the criteria established for removing the holding symbol;

“(b) the agreement may be registered against the land to which it applies; and

“(c) the city may enforce the agreement against the owner and any and all subsequent owners of the land.”

This gives the city increased control over planning under its jurisdiction, thus the reason for moving this motion.

The Chair: Any discussion?

Mr. Ernie Hardeman (Oxford): I understand that the committee got started before my arrival, so I guess I'll need some hint as to where the committee is at and what we are discussing.

The Chair: We're on the old page 26, new page 27, section 114.1. While you're looking for that, can I go to Mr. Duguid and we'll come back to you?

Mr. Hardeman: Yes, that's fine.

Mr. Brad Duguid (Scarborough Centre): The government side won't be supporting this. Zoning with conditions is a better way to do it: It would provide more certainty. The conditions are definable and conditions can be registered on-title. The problem with this is, when the removal of the holding provision comes up, it could create another negotiating period. We don't think that's really fair or appropriate. Where there's zoning with conditions, once you meet the conditions, you don't then have to go into a renegotiation to ask or beg counsel to take off your holding provision.

The Chair: Any other discussion? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Section 115: Mr. Tabuns.

Mr. Tabuns: I move that subsection 115(5) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out and the following substituted:

"Power to hear appeals

"(5) The city may by bylaw empower the appeal body to hear appeals with respect to any planning matter, despite the Planning Act."

This gives the city of Toronto an opportunity, a process for all planning matters, not just those with regard to minor variances and consents. It would help the city of Toronto provide proper protection for its neighbourhoods.

The Chair: Any discussion?

Mr. Duguid: The government side won't be supporting this. This, in essence, replaces the OMB. We think it's going way too far at this point in time, and probably at any point in time. The OMB has a very important role to play in these matters. We think we've gone as far as we should go in this, and that's to provide for a local appeal body for variances and consents. They are generally minor and community-based in nature, and certainly there's a lot less provincial impact or interest in those areas.

The Chair: Any further discussion?

Mr. Tabuns: No; simply a recorded vote, that's all.

The Chair: I'll come back to you, Mr. Hardeman.

Mr. Hardeman: I agree with the parliamentary assistant, not so much on whether the appeals process or the appointment of an appeals process for minor variances and consents is appropriate, but because the same body that is being challenged on their decision gets to appoint the hearing board to hear an appeal. I think that creates a bit of a conflict. In fact, we've had other parts of the bill where amendments have been made or are being made to open it up and give the city more power as to how they instruct the boards and commissions that they appoint. My understanding would be that this appeal body would be governed by those criteria too. So it could, at the end, give the appearance of a kangaroo court: "Yes, you can appeal our decisions, but remember that the people who are going to hear that appeal are the people we appoint. Not only that, but we tell them how they must come about making their approach and their decisions." So I

have real concern with the appeal appointment ability altogether, but I surely would not suggest that would be an acceptable manner to deal with all planning matters. That just goes beyond, to me, natural justice for anyone, to say that they would turn down the application, but you can appeal and you appeal to the body that we appoint.

1600

It was in a comedy routine that I heard once. They went in with the application. It was turned down and the mayor said, "But sir, you can appeal to council." They said, "When can we go there?" He said, "Well, that was yesterday." "Well, when do they meet again?" "A month from now. That would be one day after your appeal period ran out. So your chances of appeal are nil." I think that's what this would create. In fact, the city could fix it so you really didn't have an appeal from their decision at all. So I cannot support this resolution.

Mr. Tabuns: I think it's an amusing story, but I note that governments appoint panels all the time that review decisions of those governments. Those panels are considered to be valid and capable of operating on an arm's-length basis.

I think I've made my arguments. I'd like a recorded vote.

Ayes

Tabuns.

Nays

Brownell, Duguid, Flynn, Hardeman, Rinaldi.

The Chair: That's lost.

Shall section 115 carry? All those in favour? All those opposed? That's carried.

Mr. Tabuns, you have the next motion.

Mr. Tabuns: I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 115:

"Status of certain bylaws under the Building Code Act, 1992

"115.1 For the purposes of section 8 of the Building Code Act, 1992, the applicable law includes any bylaws passed under sections 108 and 111 of this act, any zoning conditions imposed under section 113 of this act, any site plan approvals given under section 114 of this act and any bylaws passed under this act prohibiting or regulating the destruction or injuring of trees."

In this case, it gives the city of Toronto's bylaws precedence in terms of protecting trees as opposed to the Building Code Act.

I would just like to say, because I think this question has come up before, the city of Toronto faces severe air quality problems, it faces overheating problems. Protection of the tree canopy is a significant matter in the city. The city is asking for action to ensure the protection of the tree canopy is fairly strong protection, thus the motion before you.

The Chair: Any discussion?

Mr. Duguid: Again, we won't be supporting this. There was a similar philosophical motion put forward before. The building code should be as standard as possible across the province. We have made some leniency for green roofs here, but we don't really want to go beyond that. This is something, though, that can be done through regulations, so it's something that perhaps could be looked at down the road, but at this point in time we are not willing to entertain it.

Mr. Hardeman: Again, I agree. I oppose the recommendation. I think it goes back to the concern expressed by some of the deputants that the city, as autonomous as it needs to be, shouldn't be in a position to actually rewrite the building code in any way, that the rules that apply in the building code would apply universally across the province. This would, in fact, take that universality away from the building code. I would oppose that, so I can't support the resolution.

Mr. Tabuns: I can see the direction the committee is headed in.

The Chair: All those in favour of the motion? All those opposed? That's lost.

Yours is the next motion.

Mr. Tabuns: I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 115:

"Environmental Assessment

"Class environmental assessment process

"115.2(1) Without limiting section 7 and 8, those sections authorize the city to pass a bylaw establishing and governing a class environmental assessment process for those projects in the city where the city is the proponent and which have impacts that are solely local and urban.

"Same

"(2) If a process established by a bylaw under subsection (1) applies, any class environmental assessment process established under the Environmental Assessment Act does not apply in the circumstances."

This is giving the city of Toronto greater control over processes that are of local urban impact and increasing the city's ability to control the environment within which it operates.

The Chair: Discussion?

Mr. Duguid: I guess I'm a little surprised that the NDP would move a motion that would be providing greater flexibility for—see what happens: You hear thunder. I'm not the only one surprised.

Mr. Tabuns: Someone disagrees with your position.

Mr. Duguid: I'm not sure. I think the earth could be moving.

The Chair: I'm not recognizing the sound outside the room. Mr. Duguid, you have the floor.

Mr. Duguid: This motion, in effect, gives Toronto greater flexibility over environmental assessments within the city. The province and the Minister of the Environment right now are reviewing the environmental assessment process with a view to providing greater flexibility. We certainly support that, and we think that con-

sideration should be part of that review. But it really is good to see the NDP agreeing that greater flexibility on environmental assessments is required. Hopefully, that will be a harbinger of perhaps a co-operative approach as we move forward to make those changes in the future. But we can't support it at this time. This is part of an overall review of the environmental assessment process. I'd just ask for a recorded vote.

The Chair: Mr. Hardeman.

Mr. Hardeman: Again, I'm opposed to this amendment. If our environmental process is an appropriate process for the people of the province of Ontario, the size of the municipality in which the project is happening would be irrelevant to me. If, for whatever reason, the city of Toronto believes that the process is too onerous and that development should not have to go through that process, I don't think they should be in a position to say, "That's okay, because we can shorten it any way we want. We can make this thing work for us, but the rest of the province must still follow this process." Because of the size of the city of Toronto and their ability to influence government, I think they should then be influencing government to help develop a process that would work better for the whole province, as opposed to just saying, "We will just develop something totally different for the city of Toronto."

The other part I want to emphasize is that if the body that is going to need the process approved or the process completed is the same body that sets up and can set the new rules of how it's going to be done, I'm not so sure that we're going to have a consistent approach even in the city of Toronto. That could then be changed to meet the needs of the city from time to time, and not necessarily in the best interest of the environment in the city or of the environment of the total province, because all of a sudden it becomes a bit of a conflict again. If for the building benefit we need to have this approval, but from an environmental point of view it's not the right one, are we sure that the city is going to make the decision for the right interest? So I can't support this resolution.

Mr. Tabuns: Just so that the record is clear, I appreciate the nimbleness of Mr. Duguid in leaping from this act to variations in the Environmental Assessment Act. I have to give you credit for that. But I want to say that, on a preliminary basis, commenting on the other act, I don't see that the changes are actually going to be useful. I would say that the city of Toronto consistently has taken a stronger environmental position than the province. Certainly, its position on building code changes is much stronger than anything the province is currently prepared to contemplate.

I would actually see here an opportunity for tougher environmental regulation. That's where I think the city is headed. I think the province is headed in a different direction. Just so there is no confusion about my intent and approach on this, that's what informs my direction on this.

The Chair: A recorded vote has been requested.

Ayes

Tabuns.

Nays

Brownell, Duguid, Flynn, Hardeman, Lalonde, Rinaldi.

The Chair: That's lost.

Next, Mr. Brownell.

1610

Mr. Jim Brownell (Stormont-Dundas-Charlottenburgh): Schedule A to the bill, subsection 118—

The Chair: Oops, sorry. I was too eager to move on.

There are no amendments in sections 116 and 117. All those in favour of those sections? All those opposed? That's carried.

Mr. Brownell, you have the floor.

Mr. Brownell: I move that subsection 118(1) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding at the beginning "Upon the recommendation of the Attorney General."

The Chair: Mr. Duguid, did you want to elaborate on that?

Mr. Duguid: Just a brief explanation: This is here at the request of the Attorney General's ministry. The Attorney General, of course, is responsible for the administration of justice. If, down the road, the city decides that it wants to set up an alternative parking dispute appeals board or something like that, it would have to be done through regulation. And rather than it being done through regulation coming through the Minister of Municipal Affairs and Housing, it's more appropriate that it be done through regulation coming through the Attorney General's office. So the Attorney General's office has asked that we put this in.

The Chair: Further discussion? Seeing none—sorry. Mr. Hardeman, was that a signal that you wanted to speak?

Mr. Hardeman: I just need a clarification on what we're actually changing. The Lieutenant Governor in Council—are they right out of this? Are they replaced by the Attorney General in both cases? It's just adding upon the recommendation of the Attorney General?

Mr. Duguid: Yes.

Mr. Hardeman: It's just an add-on to what's there.

Mr. Duguid: It still has to go through cabinet. All regulations, of course, have to go through cabinet, as with this.

Mr. Hardeman: Okay. Thank you.

The Chair: Any more discussion? No? All those in favour? All those opposed? That's carried.

Shall section 118, as amended, carry? All those in favour? All those opposed? That's carried.

There are no changes in sections 119 to 123. All those in favour? All those opposed? That's carried.

Section 125: Mr. Lalonde, will you be reading 125? Page 32. Mr. Flynn.

Mr. Kevin Daniel Flynn (Oakville): I move that the English version of subsection 125(1) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by striking out "corporation" and substituting "body corporate."

The Chair: Any discussion? Mr. Duguid, go ahead.

Mr. Duguid: This is just here at the request of the city. It is really wordsmithing and, as far as we can tell, has absolutely no legal impact or effect.

The Chair: Any discussion? Mr. Hardeman, you had a question?

Mr. Hardeman: If it has no material effect, I guess the question is, then why is the change being made? There must be some reason someone thought that "body corporate" is different than "corporation."

Mr. Duguid: It's to make it more consistent with the wording in the Municipal Act. But, from our perspective, it didn't really have a legal impact one way or another. The city requested it, and we felt that if they wanted it, we're fine with it.

Mr. Hardeman: I guess I need to request from the legal branch if there is a difference. I have real concern, not that it changes this act, but I think in the Municipal Act almost entirely the word "corporation" is used, as opposed to "body corporate." I wonder why this would change in this act and whether there's any significance at all.

The Chair: Is there someone here from staff who can assist us with that?

Mr. Scott Gray: Scott Gray from the Ministry of Municipal Affairs, legal branch. The language that's used in the Municipal Act is "body corporate," as opposed to "corporations." Over the years, there has been a variety of requests as to, "Why don't you call us corporations?" So we took this as an opportunity to update the legislation. Once the city had it, they said, "That's confusing, because we have a variety of things called 'corporations' now. The city is a corporation, the city boards are corporations and we can create other corporations," and they found it confusing. They said, "It would be useful if you left the language for the city and for the city-created boards as 'body corporate.'" When they create business corporations or Corporations Act corporations, they'll use "corporations" in those circumstances.

Legally, as far as we're concerned, it has no impact whatsoever. The city just felt it was confusing to have the city as a corporation, city boards as a corporation, and in the Business Corporations Act, corporations, obviously, are corporations. They said, "Oh, we're getting swamped by corporations."

The Chair: Any further questions?

Mr. Hardeman: It seems to me that to jump right out and change the name to avoid confusion, when in fact that confusion exists in our total municipal field today, as it does in this bill as it presently exists, that "the city of Toronto is hereby continued as a corporation"—not "become" a corporation, but "continued" as a corporation—and then to say, "Oh, no, that's confusing, because there are so many other corporations," why don't

we change the structure of Toronto, the existence of Toronto, and say that it is now the “body corporate” instead of a corporation?

Mr. Gray: That’s what this motion is doing. It’s changing it to “body corporate.”

Mr. Hardeman: Yes, but are there any other instances where “body corporate” is used in the municipal field to define a municipality?

Mr. Gray: In the Municipal Act, yes.

Mr. Hardeman: In the Municipal Act it is?

Mr. Gray: This was a change for the city of Toronto, and now the city of Toronto is saying, “We’d prefer not to have that change. We’d rather be treated like all other municipalities and be called the ‘body corporate.’”

Mr. Hardeman: Thank you very much. That’s what I needed to hear. I thought it was the other way around.

The Chair: Any further discussion? All those in favour of the motion? All those opposed? That’s carried.

Shall section 125, as amended, carry? All those in favour? All those opposed? That’s carried.

I skipped over section 124, which has no amendments. All those in favour? All those opposed? That’s carried.

Sections 126 through 132 have no amendments. All those in favour? All those opposed? That’s carried.

Section 133, Mr. Lalonde.

Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell): I move that section 133 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following subsection:

“Same

“(1.1) Without limiting clause (1)(c), the mayor’s role includes providing information and making recommendations to council with respect to council’s role under clauses 131(d) and (e).”

The Chair: Mr. Duguid.

Mr. Duguid: In order to explain this, maybe if I could get members to turn to pages 76 and 77 in the bill to just follow along because it bounces around a little bit.

Section 133 outlines the role of the mayor and has (a), (b), (c), (d) and (e) number of roles. This adds that the mayor also has a role with respect to 131(d) and (e), which is “to ensure that administrative policies, practices, procedures and controllership policies, practices and procedures are in place ... to ensure accountability and transparency ... including the activities of the senior management....” So it’s just further defining the role of mayor to ensure that the mayor has the ability to lead in these areas and inform and advise council in those areas. Council retains the ultimate authority, of course, but it’s just to ensure that the role of mayor is further defined.

Our intention with this, in all likelihood—of course, I can’t speculate entirely. We’re looking at this, as we move forward with changes to the Municipal Act, that this would likely be similar, if not the same, for all mayors across the province.

The Chair: Mr. Hardeman.

Mr. Hardeman: I don’t have any great concern with the mayor having that authority. I’m just concerned that by emphasizing just those two, the assumption is now

going to be made that the mayor does not get involved in developing and evaluating the policy and programs for the city. When you add these from that list that council looks after, it would seem that you then exclude those areas that you don’t specifically reference, that the mayor has the ability to take those issues and bring them to council and have council deal with them.

Mr. Duguid: I don’t share that concern. The role of mayor would be defined, I think, as different councils and different mayors would likely define it in practice. Different mayors manage in different ways, and I think we want to allow some flexibility. Right now, the city is undergoing a review of their structure. We’re awaiting their decisions with respect to that to see whether in fact they will amend their governance structure in a way that most—not all, but most—or a majority of people in the province and certainly in Toronto would hope to see. We’re waiting to see that, but we do want to provide them with some flexibility as they move forward.

1620

Mr. Hardeman: Just to simplify my question, the amendment says that this is so that the mayor has the ability to make “recommendations to council with respect to council’s role under clauses 131(d) and (e),” which you pointed out to us. I wonder why the mayor would not be able to make recommendations with respect to council’s role under (b) of that same section. It would seem to me that if we hadn’t mentioned it at all, the mayor could do that, but because we mentioned two, I would have to assume that we intended the others not to be included in that.

Mr. Duguid: In practice, the mayor doesn’t tend to develop and evaluate policies; that’s really what committees and members of council do. Mayors lead, and through leadership may indicate what they support and what they don’t support, or they may make suggestions to council and bring forward ideas. But in the end, it’s the committees and council that develop and evaluate the policies and programs. The mayor’s office really wouldn’t be responsible for doing that.

The Chair: Further debate? Seeing none, all those in favour of the motion? All those opposed? That’s carried.

Shall section 133, as amended, carry? All those in favour? All those opposed? That’s carried.

There are no amendments in sections 134 through 138. All those in favour? All those opposed? That’s carried.

Mr. Rinaldi, section 139.

Mr. Rinaldi: I move that subsections 139(1) and (2) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out and the following substituted:

“City auditor

“(1) The city shall appoint an auditor licensed under the Public Accounting Act, 2004 who is responsible for,

“(a) annually auditing the accounts and transactions of the city and its local boards and expressing an opinion on the financial statements of these bodies based on the audit; and

“(b) performing duties required by the city or local board.”

The Chair: Any discussion? Mr. Hardeman?

Mr. Hardeman: I'm looking for an explanation.

The Chair: Yes. Mr. Duguid.

Mr. Duguid: In the original version of the bill, it said, "Performing duties designated by the Minister of Municipal Affairs and Housing...." We feel that's not really in keeping with the spirit of this act. So this motion would eliminate the province's power to give the city auditor duties. If we want to audit the city, we can certainly go in and do that, but we shouldn't be able to go to the city auditor and give direction. We thought that was going too far.

The Chair: Any further discussion?

Mr. Hardeman: On that explanation: What we're really suggesting here, then, is just taking the two sections off that are presently providing an ability for the minister to be involved, and the minister is no longer involved with the auditor?

Mr. Duguid: That's correct.

Mr. Hardeman: If the minister is not involved at all in this section, what is there in place that will make sure that this actually happens?

Mr. Duguid: In terms of accountability—it's later in the act—it's mandatory that the city appoint an auditor general who would be independent of the city to oversee the city's operations, similar to our Auditor General. This is not the auditor general; this is the city auditor function. We just felt that—in fact, I can't think of too many circumstances where a minister would need to advise the city auditor. We don't pay the city auditor; we don't hire the city auditor. It's their city auditor, not ours.

The Chair: Further discussion? All those in favour of the motion? All those opposed? That's carried.

Mr. Tabuns, your next motion is a duplicate, and a very good one, I might add; I think it's exactly the same. But I think you need to withdraw that one.

Mr. Tabuns: Thank you for that validation, Madam Chair. Yes, I will withdraw it.

Mr. Hardeman: I would assume that that was a recommendation from the city.

The Chair: I'm sure it was.

Shall section 139, as amended, carry? All those in favour? All those opposed? That's carried.

Section 139.1: Mr. Brownell.

Mr. Brownell: I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 139:

"Chief administrative officer

"139.1 The city may appoint a chief administrative officer who shall be responsible for,

"(a) exercising general control and management of the affairs of the city for the purpose of ensuring the efficient and effective operation of the city; and

"(b) performing such other duties as ... assigned by the city."

The Chair: I think the wording is "as are assigned by the city." You said "as assigned."

Mr. Brownell: "As are," yes.

The Chair: Okay. Mr. Duguid, did you want to give some detail?

Mr. Duguid: This motion mirrors an identical section in the Municipal Act, so it's really just trying to clarify the positions and responsibilities, roles and responsibilities. It really doesn't go much further than that.

The Chair: Any other questions?

Mr. Hardeman: I'm just concerned. I know it was presented to us in one of the deputations that dealt with making sure there was a clear delineation between and a definition of the responsibilities of the political and the administrative functions within the city. The act presently doesn't have any reference to appointing a chief administrative officer. If we're adding this in, the government mustn't see a need to make sure that the city does have a chief administrative officer, because if it wasn't for that, they would fit right in with all the other staff they can hire for "the efficient and effective operation of the city."

If the government believes it's important that they have a chief administrative officer, it would seem to me that the appointment should have more force than this, because as I read this amendment, they may do it, and then again, they may not. And if they do it, the direction of who they appoint as the chief administrative officer is so general that I don't know why you would put this in the act. If someone in the city, as a ratepayer, was to come to the conclusion that they don't believe the city is running effectively and that they should have a chief administrative officer, I don't know how they would use this section to facilitate something happening at the city, because the first answer would be, "The word 'may' starts it all off. We don't have to do that at all. It's just up there for decoration. It really doesn't do anything." I just wonder why we would be amending a bill by putting in a new section that has absolutely no force of law in it at all.

Mr. Duguid: I know Mr. Hardeman has served in municipal office as well. I don't know if he's ever had the experience, but there are sometimes occurrences where there are conflicts in terms of defining roles between CAOs, mayors and councils.

Not all municipalities have chief administrative officers. Certainly, in the city of Toronto, there are other structures they could entertain—I don't know if they're any better—that wouldn't have one, so we don't want to tell them they have to have one. But if they do, we want to ensure that there is some definition of role. It's very general. It's not too specific in terms of what they would do, but it just sort of defines what they would do vis-à-vis the political arms of governance.

Mr. Hardeman: Madam Chair—

The Chair: Can I just recognize another speaker, and then I'll come back to you? Mr. Tabuns.

Mr. Tabuns: I will pass. The questions I was going to ask have been asked.

Mr. Hardeman: Again, I totally agree with the explanation, but my contention is that this amendment doesn't do the suggestion that you're making. This doesn't define what they're supposed to do if they decide to have a chief administrative officer, because it's so

general that it's motherhood. Of course, if you decide to appoint a chief administrative officer, "exercising general control and management of the affairs of the city for the purpose of ensuring the efficient and effective operation of the city" doesn't really give you any idea of what that means. I don't know how anyone on council, or citizens in the street, would take from that the conditions of the act were being met or not being met, because it's so general. It would seem to me that we could have saved a lot of time and a whole page in the amendments by saying nothing about this, because the end result would be exactly the same. It just seems to me like it's filling a page.

1630

The Chair: Further discussion? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 139.1 carry? All those in favour? All those opposed? That's carried.

Mr. Duguid: On a point of order, Madam Chair: These are identical motions, and we're happy to let the NDP move this motion. We'll support it.

The Chair: Great. So you want to withdraw number 37?

Mr. Duguid: We'll withdraw 37 in favour of 38.

The Chair: Mr. Tabuns, you have the floor.

Mr. Tabuns: I move that subsection 140(1) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by striking out "including a neighbourhood committee and a community council" in the portion before paragraph 1.

The Chair: Any discussion?

Mr. Hardeman: I'd like an explanation of what the intent of the motion is.

The Chair: Mr. Tabuns, would you like to?

Mr. Tabuns: It's simply to leave authority with the city in terms of deciding composition.

Mr. Hardeman: Again, I question the purpose of the amendment changing it from where it presently is.

The Chair: Mr. Duguid, did you want to help?

Mr. Duguid: I understand what the city was looking for. This was a request from the city. They just thought we were being too prescriptive in including a neighbourhood committee and a community council in this section, that in fact they would do that as a matter of course. They fully intend to do that and will always probably have that in there. I think they were concerned with why we were prescribing these and maybe not others and that it's better for drafting purposes just to have it out of there. Our legal people and our ministry agreed.

The Chair: Any further discussion? All those in favour? All those opposed? That's carried.

Mr. Tabuns, you have the next motion.

Mr. Tabuns: Before I read this out, just so I'm clear, I've been reading the titles of these. It was raised with me yesterday that what you need—

The Chair: You're supposed to read the whole motion into the record.

Mr. Tabuns: The whole motion?

The Chair: Yes.

Mr. Tabuns: So if I started with "I move that subsections 140(4)," would that be adequate for your purposes?

The Chair: I think so. Yes.

Mr. Tabuns: Fine.

Mr. Hardeman: But you read so well.

Mr. Tabuns: I'll remember that compliment.

The Chair: Just read it accurately. That's the most important part.

Mr. Tabuns: Okay. I move that subsections 140(4), (5) and (6) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out.

These subsections set out a variety of rules regarding the operation of city committees, city boards, and the city's position is, "We should be able to decide that structure." This is micromanaging on the part of the province to prescribe in this detail. On that basis, I think they have a valid argument, and I put forward this motion.

The Chair: Any discussion?

Mr. Duguid: I wasn't entirely sure what the city was looking for here, except it appears that they want to have full control over the term limits of their appointments. I guess it's something that may be worthy of further consideration down the road, but right now, the biggest concern we would have is one council appointing somebody for a very long period of time, and they may not be in office three years hence; it'll be four years hence now. That person will be appointed to serve under the new council. So we thought the three-year appointment period is appropriate. They can reappoint every three years. That's my read of what they were trying to achieve through this, and we prefer to keep it with limits in terms of the number of years for their appointments.

The Chair: Further discussion? Mr. Hardeman.

Mr. Hardeman: I'm confused, because what I read in the amendment is not what I just heard from the parliamentary assistant. The present act determines that city council can decide the term of office and remuneration to boards, so city council could—according to my understanding of that, at least—appoint someone well beyond the term of council and decide how much they were going to get paid.

What the amendment implies to me is that that will be removed, so it will not refer to whether they can appoint the term of office. They presently can, in the act: The term of office and remuneration of the board is number 4; the number of votes of board members is number 5. This amendment intends to remove that, so it won't speak of it. I guess they would still have the authority, but it doesn't speak to what authority it would have. I'm confused as to what this amendment is supposed to do, and what it does if it passes or doesn't pass.

The Chair: Maybe we can go back to the mover. Mr. Tabuns.

Mr. Tabuns: What's intended here is to give the city of Toronto the discretion to set the rules around the oper-

ation of committees. Unless Mr. Duguid has information that I'm not aware of, I don't think there was a concern on the part of the province to say, "You can only set terms that go to the end of a council's time in office," because that isn't here. What the city has asked for is simply that these matters be left entirely in their hands; no need for the province to be as prescriptive as it is. It's as simple as that.

Mr. Hardeman: That's the interpretation that I had, but I'm not sure I would agree that in section 140, (4), (5) and (6) are in any way being prescriptive. It doesn't say that they "must" make those decisions. It's almost like a reference of the type of decisions they could make. So if you take them out and leave the rest, one could, I suppose, question whether they had the power to make those three, if they were no longer listed, that they do have. I think it might actually curtail their ability, rather than help their ability.

Mr. Tabuns: I would say that their position is, no, in fact, they would like to have this room for decision-making.

The Chair: Further debate?

Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 140, as amended, carry? All those in favour? All those opposed? That's carried.

Section 141: Is somebody going to be reading number 40?

Page 40: Mr. Flynn, since you are plugged in, maybe you could read it.

Mr. Flynn: I move that the English version of subsection 141(1) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by striking out "corporation" and substituting "body corporate."

The Chair: Any debate? Mr. Hardeman.

Mr. Hardeman: I have a question. I'm not sure if anyone can answer. Are we sure that nowhere in this document the word "corporation" appeared prior to the point where we changed the name from "corporation" to "body corporate," now recognizing that we're going to go all the way through and have these amendments to change "corporation" to "body corporate"?

The Chair: Are you asking a question of our legal staff?

Mr. Hardeman: Yes. Are we sure that it hadn't appeared before anywhere in the act?

The Chair: Could we get an answer to that?

Mr. Gray: You mean before section 141?

Mr. Hardeman: Yes.

Mr. Gray: It appeared at least once. I don't know how many times we've had this motion, but we made one previous change a few motions ago. We think we've gone through the act and changed it. I think there were four or five different places where it's describing either the city or a city board, and they described them as "corporation." We changed each one of them to "body corporate."

Mr. Hardeman: On page 73, 125, "City continued": We changed the "The city of Toronto is hereby continued

as a corporation...." That's where we changed it to the "body corporate." Nowhere in pages 1 to 72 does the word "corporation" appear?

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Mr. Gray: We don't think so—not describing either the city or a city board. I think "corporation" probably does appear in other contexts, when they're talking about the city creating—

Mr. Hardeman: But not as the city.

Mr. Gray: Yes.

Mr. Hardeman: Okay. Thank you.

The Chair: Any further discussion? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Tabuns, your motion is a duplicate.

Mr. Tabuns: I will withdraw.

The Chair: Thank you very much. The next motion is virtually the same, only it's subsection 141(4). Could somebody read that into the record?

Mr. Lalonde: I move that the English version of subsection 141(4) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by striking out "corporation" and substituting "body corporate."

The Chair: Any discussion? Seeing none, all those in favour of the motion? Sorry, Mr. Hardeman?

Mr. Hardeman: No, it's fine. Thank you.

The Chair: Okay. All those in favour? All those opposed? That's carried.

Shall section 141, as amended, carry? All those in favour? All those opposed? That's carried.

There are no changes to sections 142 and 143. All those in favour of those two sections? All those opposed? That's carried.

Section 144: Mr. Tabuns.

Mr. Tabuns: This matter has been settled in a previous vote, and that being the case, I'll withdraw the motion.

The Chair: So that's page 43 you're withdrawing. Okay. So you have—

Mr. Tabuns: If the city's legal interpretation is right. It's a pain, but I think we've gone through that one.

The Chair: And 44 is yours as well.

Mr. Tabuns: I move that clauses 144(3)(f) and (g) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out.

This motion will allow the city to dissolve or change a local board that's a corporation as established under section 147 of Bill 53 and will allow the city to dissolve or change a local board that is an appeal body under section 115. That's the intent of the motion.

The Chair: Any discussion?

Mr. Duguid: We have difficulty supporting this one, simply because the motion would give the city the ability to override the provincial regulations with regard to, I guess, local appeals bodies and corporations.

Mr. Hardeman: I won't be supporting the regulations, although I appreciate the city putting it forward, recognizing the minister's comments about the act being an act that was going to give the city authority. This is

one of the areas that that authority was being asked for, but personally being of the opinion that there needs to be the protection or the ability to make sure that we are consistent across the province in some of these issues, I can't support the change. I do support the member for bringing it forward.

The Chair: Further debate? All in favour of the motion? All those opposed? That's lost.

Shall section 144 carry? All those in favour? All those opposed? That's carried.

There are no changes to sections 145 to 150. All those in favour? All those opposed? That's carried.

Section 151 is a recommendation, not a motion. Is there any debate on 151? Mr. Hardeman, this is your recommendation, but it's not a motion.

Mr. Hardeman: There's not an amendment here, but I think it's very important. This is the section that we heard a lot about in the presentations about the powers in the bill and the trust we have in the city of how they're going to operate as a mature level of government, how they're going to operate in an efficient and effective manner in the best interests of the population. Recognizing that the structure of the governance within the city—I think both the city and the province realize that some changes need to be made for that effective operation. This section, at least from what we've heard, is almost totally there to let the province take over because the city hasn't got around to it. I guess I'm almost shocked about the point that there aren't amendments here from the city dealing with this section, except they totally disagree with it.

The challenge we have here, and that's why I wanted to speak to it for a moment, is that they made the assumption that when the government side looked at this section and listened to what was said, they would agree with not voting for this section. If we think of the governance of the city, and we heard that from both the city and the people who were on the other side—in fact, there were a couple of presenters who said, "Don't implement this act until the structure is changed." Because it wasn't changeable by amendments, I don't think anyone, as we were looking through the bill—and I just want to point out that my bill is highlighted with red at this section because of the problem. It would seem to me that because everyone agreed it should be totally removed, we didn't have any debate on it, because there were no amendments.

So I really have concerns that this is the ability of the province to totally take over the structuring of the new council. I would suggest that we should have been working as a province with the city to get that structure in place even before this act was introduced so that you could develop the act around the structure. But that not being possible now, they should at least have the structure decided on locally, or decide that it isn't going to be decided locally, then decide what the best structure is and get it in place before we set this whole act in place and expect the city to start governing according to these rules and regulations and set up their administration and

not have any idea what their council and the administration of the whole city is going to look like a year from now, because if they can't come to a conclusion, the Minister of Municipal Affairs is going to decide how that's going to happen. This is the section that's going to allow him to do that.

I'll just turn it over to my colleague. I'm sure he has a few words to say on this section.

Mr. Tabuns: I'm very appreciative of the position taken by Mr. Hardeman. I find this an extraordinary part of the legislation. The city of Toronto will make good decisions and it will make bad decisions, just as individual humans make good and bad decisions, just as provincial and federal governments make good and bad decisions. What the province has reserved here is the power and the structure to go in and dictate the structure of that government. I think that's a profound problem for the city of Toronto. I think it's a problem for the province. I think it's a problem for the voters of the city of Toronto, who expect to have a council that's responsive to them and that will answer to them for questions around political structure.

I think the government should vote with us on this one, should take section 151 out, as recommended by Mr. Hardeman. It's consistent with the views of many Torontonians, including David Crombie, who I thought spoke quite eloquently in that clip we saw presented by Councillor Walker's assistant. David Crombie is a pretty level-headed guy. I've disagreed with him from time to time, but he seems to have the interests of the city at heart and has spoken well on the need to ensure that there's an openness and an access to politicians in this city that the structure proposed in the legislation would not provide.

I would again thank Mr. Hardeman for bringing this forward, and ask the government members to side with Mr. Hardeman and myself and vote against section 151.

Mr. Duguid: I was almost going to say, "It must be nice to be in opposition," but really, it's probably not all that nice to be in opposition. The fact is, here the NDP doesn't want any kind of accountability at all. Just, "Here's the City of Toronto Act. It doesn't matter that we've heard from a number of people, not just the business community," but the business community spoke loud and clear. We also heard from the likes of Anne Golden, David Pecaut and others, a number of city builders and city leaders, that there is a need for greater accountability and structural governance changes for the city.

Many of these individuals also said, including the board of trade in their report, that it's really important that these structural changes take place. We trust that the city will move forward, as they've indicated they will, with some significant governance changes that will ensure greater accountability. We trust that. We look forward to them debating it.

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We don't think—and perhaps that's the Tory position, but it's hard to tell—that we should come upfront and

impose anything. We think that's showing a lack of faith in members of Toronto council. At the same time, we have a public responsibility to the people of Toronto to ensure that if they don't get that governance structure right, if they don't enhance accountability within their governance structure, then with these enhanced powers, there may be a need down the road for the province to assist in moving forward with some of those changes that many individuals have been calling for from all political spectrums and from all sectors in the city. So it's very important that we have the regulatory ability to work with the city in bringing forward some strong governance changes, but we're very confident that these are regulations that, in fact, the city will not likely make us have to impose.

The Chair: Further discussion?

Mr. Hardeman: I can't believe what I just heard. It's not a matter of whether you're in opposition or whether you're in government. When you're at committee, you're here to design the best possible bill we can for the governance of the city of Toronto. Of course, as opposition, we do have the advantage of being able to look at what each section does and what it doesn't do. We can take a position to make it better, knowing full well that at the end of the day, the government is going to be bringing this bill back into the House and that's going to be the law of the land. I'm not naive enough to believe that that isn't going to happen, but at the same time, I'd like to think that the process gave us the opportunity to discuss those issues that have been put in place in the big picture. But through hearing the depositions and so forth, that opinion has changed and the needs have changed, or hopefully some people's opinions have changed.

As an opposition, I have the ability to say, "You know, I heard what they said, and it makes sense to make that change. That's why I bring that forward." I hope that the government side would look at that and say, "Yes. Most of the time I don't agree with the opposition, but in this case, what he's telling us is exactly what all"—I take that back; not all, but the vast majority—"of the deponents, both those who supported the bill and those who didn't support the bill, put forward that we needed more clarification on, making sure that before this bill was passed, we had a system in place that would be different from the governance we presently have."

If, and it's a large "if", the government really believes that they know what the solution is—and they must, because they're convinced that by putting this section in the bill, if the city of Toronto doesn't come to where they want them to come, then they have the ability to change that. So they must already know that the present structure is not what the government is prepared to accept. If they know what it is they don't want, I dare say that, with all the work they've done and all the information they've gathered, they must have some idea of what they do want done.

Now, this is where we get to the part where there's a difference between being on the government side and representing the opposition and the Tories. I don't

believe that you put a section in there saying, "We want to give you all this power. We want you to make the decisions because you know what's best for your people, but if your decision is not what we want, we will have the hammer to change it."

I would think that if that's what you wanted to do, if you're going to make the final decision, if the provincial government is going to make the final decision, they wouldn't print this in the bill and say, "Why don't you go out and spend a year or two and find out what the solution is? Oh, we don't want it to be that long, do we? So we'll give you six months. You come up with a solution we like, and if you don't, we will impose the solution."

I think being upfront and saying, "We have a view of what governance should look like, and this is what we want you to do"—put that in place. If you take this section out, a year from now or two years from now, if the city doesn't like what the province imposed and it isn't in the best interest of their people, they can change their governance model. That's what this bill does: give them power to set their own destiny, to develop their own destiny. To me, this section is strictly, "We want the appearance that we're giving authority to the city, but we don't trust them to do it right, so we put in not just that we will assist them"—as the parliamentary assistant suggests—"we will assist them in making decisions in their best interest."

I think it's important that we put on the record a little bit what this section actually says.

"The Lieutenant Governor in Council may make regulations:

"(a) requiring the city to establish an executive committee from among the members of council and prescribing the composition, powers and duties of the committee including, for example, requiring the committee to provide strategic directions for the city." Not only is it asking or allowing the province to set the committees, but they actually can set the committees' agendas. That is a long way from giving the power to the city, giving the ability to decide their own destiny.

"(b) requiring the head of council to appoint the chairs and vice-chairs of specified committees of council and specified local boards." The mayor can no longer make a decision on which committees he will appoint a chair to? Incidentally, the act doesn't say that the mayor has that power now, so if the city decides that the mayor shouldn't have that power, the minister can say, "No, that's wrong. We're not going to accept that. We want the mayor to be able to do that. That's not something that we think the elected officials in the city should be allowed to do. The mayor should be doing that."

"(c) requiring the head of council to appoint one or more deputy heads of council from among the members of council and prescribing the duties of the persons appointed." If the city doesn't come up with a plan, the Minister of Municipal Affairs can decide how many deputy mayors we need in the city? I just can't imagine they would put this kind of thing in.

“(d) requiring the head of council to nominate or to appoint one or more persons who will have the prescribed responsibilities, powers and duties of a chief administrative officer for the city.” In the previous section we had a debate that I said was somewhat redundant, and now I realize why it is: They may appoint a head of council, but if they don’t, the minister can force them to in this section. Again, we’re taking away the power of the mayor.

“(f) establishing procedures relating to the dismissal of persons who are nominated or appointed under clause (d).” Again, the minister could actually decide that what’s been happening, the reports they’ve received from the city that were required in the last six months aren’t quite the way the minister would like them. The minister could actually pass a regulation to start the process of dismissing the chief executive officer of the city of Toronto. It just boggles the mind that the minister would have those types of powers.

“(g) prescribing transitional matters relating to the exercise of powers and performance of duties under clauses (d) and (e).” Now he can decide that the chief executive officer should be dismissed. He can then, by regulation, set the process in place that the city of Toronto must follow to dismiss the chief executive officer.

“(h) requiring council to appoint specified committees composed of members of council elected from specified geographic areas of the city and requiring the city to delegate prescribed powers and duties to the committees.” Not only can the province, by regulation, appoint heads of the committees, they can actually appoint the members of council to the committee they want them on. We’re talking about self-governance? In fact, the minister has the ability to take away governance in the city of Toronto. The only part he didn’t do—at least I don’t think so; maybe the parliamentary assistant will correct me—is that he hasn’t decided yet that these people could be appointed from outside of council, when they talk about committees, although he cannot give them any powers.

“(i) specifying procedures for the adoption by the city of a budget ... or the adoption or readoption of a budget under section 224.” He can tell them how they must proceed to deal with the budget.

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“(j) specifying the duties of the head of council in respect of the adoption or readoption of such a budget by the city.” So he can actually set a regulation in place that says that he must consult with the mayor of Toronto so that the mayor of Toronto can be told how he should proceed with the budget process.

“Conflict

“(2) In the event of a conflict between a regulation made under this section and a provision of this or any other act or regulation, the regulation made under this section prevails.”

So it doesn’t matter what else happens in here; any part of this bill can be overridden by the regulations in this section.

I just can’t believe that the city of Toronto didn’t have every one of their amendments on this section. It gives the ability of totally overriding, by regulation, everything else that’s in the bill. Having said that, obviously, Madam Chair, you may have guessed by now that I don’t support this section.

The Chair: I was coming to that conclusion. Mr. Tabuns

Mr. Tabuns: You are quite discerning in your ability to see what’s actually happening.

I have to say Mr. Hardeman set out the case very strongly. I do find it extraordinary. I think it’s pretty clear that if the city of Toronto doesn’t come forward with a structure that reflects what’s here in section 151, the government has set the stage to shape, in a very detailed, very prescriptive, very micromanaging sort of way, the way that that government is going to operate, the way the mayor is going to operate.

The accountability of council is largely removed; their responsibility for their structure is removed. It reminds me of a saying attributed to Henry Ford: “You can buy any colour Model T you want, as long as it’s black.” The city of Toronto is being given a similar option.

I don’t know what led to this motion. I’ve heard Mr. Duguid talk about the board of trade and other business groups making representation and being concerned about the structure, which is all well and good. They’re bodies that have a role in this city, that have credibility in this city. They’re more than welcome to talk to the city councillors, who are responsible for the government of this city, but in the end they’re just one amongst a number of interest groups who’ve put forward their position, and their position should not be dictating the structure of the city. It should be the people on the council, elected by the voters of this city, the citizens of Toronto, who decide the structure and be accountable for that structure. We on this committee should strike out section 151.

Mr. Duguid: This bill provides the city of Toronto with powers, access to alternative sources of revenue, flexibility and accountability that other cities in this country have never had. There is a duty on behalf of this government to ensure that, for the sake of the people of Toronto, their futures and fortunes are protected as well.

As a former city of Toronto councillor, as a Toronto MPP, as a resident of this city, I hold the province accountable, as we move forward through these changes, to ensure that in fact with the great powers that we’re giving the city, with the significant shift in powers, there’s also an ability to ensure accountability. That’s what this is about: ensuring accountability.

Now, I know that the NDP doesn’t have to be accountable to anybody anyway. They just want to give the city everything it wants. In fact, they’ve just taken the city’s motions and requests and said, “We support anything the city’s asked for.” They can do that because they don’t have to account for the results of this act. We have to look at everything the city’s asked for and determine what we think is in the public interest, and we’ve done that with the support of the city. In fact, I spoke to Mayor

David Miller today, who's very enthusiastic about this act going through as it is. He's not exercised about the fact that the province wants to retain control if need be to ensure that these governance changes are made; he's committed to making those governance changes.

These regulations will probably not have to be used, but it would be absolutely irresponsible of our government to just say, as the NDP want us to do, "Just do whatever the hell you want, and we don't care if it's accountable to the people, we don't care if it's going to work, we don't care if it's in keeping with the new powers that you have." That would be irresponsible.

Secondly, here we have the Tories. Keep in mind what these people did to our cities. Keep in mind what they did to Toronto. Toronto could not even change the names of their wards under the legislation these governments put forward. All other cities in the province could do that. Toronto could not change the boundaries of their wards. Toronto was told that they had to slash the number of councillors twice—not once, but twice—by this government. They were told they had to amalgamate, despite the fact that 76% of the people in the city voted not to. I mean, to me, that is draconian, that is imposition.

The Tories sort of are saying, impose on one hand and take away the ability to hold accountable on the other hand. Well, we're not going to impose. We want to give the city every opportunity that they have, as they've committed to do, to consult with the people of Toronto and come up with the best possible governance structure. We will ensure that we have the ability to hold them to account for that. They've agreed to do it, but we're not just going to say we're not going to accept that we have some accountability and responsibility here. We do. We have responsibility to the people of Toronto to ensure that, in fact, the city lives up to their commitment to reform their governance structure.

Having worked under the governance structure that they currently work within, there's a fair amount of dysfunction there. There's a need for change. Virtually everybody who came before us, if asked, would have probably agreed with that. So we're allowing the city to go out and do their work, do their consultation, come forward with a proposal that hopefully will serve the needs of accountability to the city and will work well with these new enhanced powers they're getting that no other city in this country has. We're not alone in thinking that. This is not just a board of trade suggestion, although the board of trade is supportive. We shouldn't ignore the board of trade. They're important. We need jobs in this city. We need a good business climate in this city.

So that's important, but the likes of Alan Broadbent, Joe Berridge, Paul Bedford, David Pecaut, Anne Golden, just to name a few—and they're just a few of the city leaders. Any list of city leaders—if you're going to get 10 people in a room, these people would be on it. Virtually all of them have said there's a need for greater accountability, a need for governance changes, and they support the direction we're taking here.

So I recognize the concerns expressed opposite.

Don't agree with them. I think we're heading in exactly the right direction on this. We're giving the city the ability to go out and get the job done, but we're also ensuring that we're accountable to the people who elect us in Toronto, the people of Toronto. After all, they're the people who are going to benefit from this City of Toronto Act more than anybody else.

The Chair: Mr. Tabuns.

Mr. Tabuns: Mr. Duguid has made his points. I don't think there's a particular need to get into the virtues or lack of virtues of any party. I think we can spend our time on the matters before us.

In the end, the city of Toronto is fully accountable to the electors of Toronto. Governments get voted in; governments get voted out. Councillors get voted in; councillors get voted out. I as a politician and the party I belong to can be voted in; I can be voted out. This act retains elections in the city of Toronto. Councillors, mayors are still required to go out and get the support democratically of the voters in this city in order to continue in office.

So to say that the city of Toronto is unaccountable, I think, is incorrect and certainly not in keeping with an understanding of democracy in this society. They have to get votes. If they don't perform in a way that's satisfactory to people, they get the boot, and it's the same for everyone who sits around this table who's elected. If you don't do what people expect you to do, if you act contrary to their interests, it may take more than one election, but you'll get the boot.

I would say that to suggest that the people around this table who are elected are not accountable is not accurate, and certainly to suggest that the city of Toronto council will not be accountable unless it has a particular structure prescribed by the government is also inaccurate. I've heard the arguments. I don't know if there's a lot more to canvass, but I think that what you're putting forward is contrary to the arguments you make about giving the city of Toronto responsibility.

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I was certainly one of the people very active in opposing the megacity initiative on the part of the previous Conservative government. We felt that the interference in the internal affairs of the city of Toronto was outrageous. We were right, and I think that this section continues that legacy. It doesn't break with it, it continues it, and thus is contrary to the arguments you've made, Mr. Duguid, in other fora.

Others may speak to it. I've made my point.

The Chair: Mr. Hardeman.

Mr. Hardeman: Again, in response to the comments from the government side, I just want to point out that this is an issue of dealing with this bill. If I had been there to help draft the bill or to be part of drafting the bill, it likely would have been drafted in a considerably different way. It also wouldn't have started off with the preamble to this bill, which is that it is now a mature level of government responsible to the people of the municipality, and they can be trusted to do the right thing

for those people, and then be fully covered off in the ability to override those duly elected representatives on any issue.

The parliamentary assistant talked a little bit about the powers we're giving the city. This isn't just small stuff. They get new taxing powers. They get new regulating powers. They may go awry with that. We're all told that that wouldn't happen, and some of us question whether it might or might not. I'm not maybe as convinced as the parliamentary assistant was that everybody will always do the right thing, that if they're short on money at budget time, they will not decide to get it from someplace where it's gettable, even though it may have a negative impact on that part of the economy. I'm not saying they would. I'm just saying I'm not as sure as the parliamentary assistant.

I believe, for those types of things, there needs to be protection in the bill to make sure that the province, which has the ultimate responsibility—this isn't a charter. This isn't giving them a third state of government. They're still part of the provincial municipal government structure. So I think the province has a certain responsibility. We may get into that later, but this section doesn't deal with that.

This section deals with the most basic part of the structure of governance, which is city council. In the bill they have all kinds of abilities and powers to set up boards and commissions to deal with the function of the city. They have the ability in the bill to change the structure of governance itself. The province says that it feels comfortable in giving them that power, but this then turns it around, that by regulation, if we don't like what they do, even if it's in the best interest of the city and the city believes—as was just mentioned, they have to go back to the people, so the chances of them designing a structure that will not work in the best interest of the population of Toronto is not likely a very good assumption. In fact, I would think there would be a greater chance that the minister's regulation would produce a council that was less comfortable for the people of Toronto than the city would, because the minister and the executive council are not totally responsible or totally relying on the city of Toronto. The city of Toronto council is, so they're going to make decisions in the best interest of all the people of Toronto.

I'm not sure that's necessarily true for the province of Ontario. There are a lot of people in the cabinet, in the executive council, who do not come from Toronto, as I don't. I'm not sure that my decision would be more appropriate than the decision taken by the council of Toronto. If that decision, after much wisdom, is to stay with the status quo, I don't see the need for the province to be able to jump in with, "No, we don't like that." In fact, we heard a lot of people say that they didn't like that. If that's what we're going to base the decisions on, then let's get on with basing that decision on it right now and not make a charade of saying, "You get to make your own decisions but only if they're decisions we want made." I think, really, that's what this section does.

I want to point out what I think is so important, that this section is only with the structure of governance. I am recommending we vote against the whole bill so the next sections would be included, but if you start reading the next section, it deals with what the province can do with regulations over boards and commissions within the city. Again, it's more of the same. This section is strictly on the council and its boards. Talk about draconian: the ability to "pre" this section until the regulations are made. It looks like the city has all kinds of ability to deal with the structure of council but in the end what the cabinet decides is what we get—no ifs, ands or buts. They can design everything down to the individual members sitting at the committee and telling them how they're going to conduct their business at that committee meeting. It can all be done by regulations and I see absolutely no local governance left if the minister decided to implement every one of these.

Incidentally, the majority vote at cabinet would not be from Toronto. So I think that we are taking the power to govern in Toronto away from Torontonians and into the cabinet room at Queen's Park. The government should reconsider and vote this section down.

Mr. Tabuns: A question through you, Madam Chair, to Mr. Duguid: Correct me if I'm wrong, but I've had a sense from discussion or comment you've made in the course of these hearings that a number of the changes you're putting forward in this act may well be utilized to change the acts as they apply to other municipalities; for instance, Hamilton, London, Ottawa, Windsor. Is there an intention on the part of the government at this point to install this kind of legislative language in legislation covering other municipalities in this province in the years to come?

Mr. Duguid: The government is currently in discussions with AMO, in particular through our MOU process, on changes to the Municipal Act. We've received information from a number of municipalities through resolutions and discussions, and nothing has been drafted at this point in time in terms of the Municipal Act changes. We expect them to be coming forward and we're hoping that they'll be brought forward and introduced this spring.

Mr. Tabuns: Nothing has been drafted, but is it your intention to go in this direction with other municipalities?

Mr. Duguid: I can't speculate on that. Like I said, the legislation hasn't even been drafted and you're asking me to speculate on whether a regulation such as this could be put in place. Again, the Municipal Act is being considered in consultation with AMO. Whether this is something AMO would want in the act or not, I don't know.

The Chair: Any further discussion on section 151?

Mr. Hardeman: Just one more question. I keep hearing the parliamentary assistant suggest that it's done in consultation with AMO and the city of Toronto. I wonder how much consultation on the structure was done with the general public, or if there was any done. The general public who presented here, who were not present city councillors—in fact, even some city councillors.

Knowledgeable people came forward who didn't subscribe to this approach.

The other one, of course—it's not in here—is the term of office that was in the budget bill, where we extended the term of office. There were presenters here in this venue—and I guess that makes it appropriate to bring it up—who were opposed to that. How much of the consultation on this was done with the people presently outside the political structure?

Mr. Duguid: As opposed to the previous government, which had very little—

Mr. Hardeman: This wasn't a question about comparison; I wondered how much was done by this government.

The Chair: Mr. Hardeman, please let him answer the question.

1720

Mr. Duguid: Sometimes comparison is interesting. As opposed to the previous government, when they amalgamated the city and completely turned it upside down—a state from which the city is still trying to recover—where there was no consultation at all, we had unprecedented consultation. For the first time in the history of this province, I believe, the city and the province together embarked on a consultation that took place in every community across this city, with thousands of people having the ability to participate, discuss and have input on these particular matters. Governance was one of the most discussed topics during those consultations.

Mr. Hardeman: I just want to ask—it was a very nice answer, but it had nothing to do with my question—was there any consultation done as to the structure of council with the general public where I could be confident that this is what the public wants, a two-stage process: Give the city a chance to look at what's required, then turn around and, if they don't come up with the right answer, the province can impose it? Was the decision that that was the right way to deal with it from the general public or from city council?

Mr. Duguid: As I said, not only did we embark in a historic joint consultation with the city to hear directly from the people of Toronto, but the city commissioned Ann Buller and a number of others to put together a report and consult with the people and come back with recommendations, which they've done and which the city has considered and is in the process of considering as they move toward their decision. So there's been consultation at the city level directly and there's been joint consultation with the city and the province together. There has been a great degree of consultation on these particular matters.

Mr. Hardeman: Has there been any consideration of suggesting to the city that, prior to the passing of this bill, they come to a conclusion on that report so we would know what the structure would look like and whether it was going to be provincially imposed or not?

Mr. Duguid: That makes sense to me. The regulation is there to ensure that we have the ability to reach a conclusion in this. Our belief is that the city will work

extremely effectively in putting forward a governance structure that's going to work very well for the people of Toronto. We feel we have a responsibility to ensure that that happens. In doing so, that's why you have this regulatory ability within the legislation in front of you.

Mr. Hardeman: I'm still concerned about why it would have to be so specific in the regulatory ability. Why would this not just say that in the event the city doesn't find a solution, the minister can, by regulation, impose a different type of government, as opposed to telling them that they can appoint chairs to committees, telling them how their agendas must work and things like that? It just seems like the process is so micromanaged that I find it very difficult to believe that there is any intent for local control of this operation.

Mr. Duguid: That was a question?

Mr. Hardeman: Yes, I had the question in there. I've got all day. Was there any intent or consideration given to making it less prescriptive in this section, to say that because we've protected the local interest, the Lieutenant Governor in Council can have the ability to make regulations to implement a different form of governance as opposed to telling them to establish procedures relating to the dismissal of a person who was nominated or appointed under clause (d)? This is getting pretty micromanaged. I find it hard to understand why that would be considered local autonomy.

Mr. Duguid: Well, if you look at a governance structure, if you really wanted to put in regulations to completely impose a full governance structure, you'd probably need to be even more specific than that in a number of other areas. But we felt that there's a need to ensure that as the city moves forward, it does eventually get to approval of a governance structure that will work for the people of Toronto. This provides us with the ability to ensure that they get to that. We're very confident. In fact, as I said, I spoke to Mayor Miller today at a Walk of Fame event in Scarborough, and he's very excited about moving forward with this legislation and quite comfortable with the way it's drafted.

Mr. Hardeman: I keep hearing that you've had continuous conversation with Mayor Miller. Have you done the same with the other councillors? Obviously, the opinion of the council of Toronto is not consistent. I've heard some suggestions that this has been put in place in order to deal with, if the mayor can't convince the majority of council to do what he wants, he's going to use this as the hammer: "If you don't do it my way, the province will do it to you." Have you had any further discussions with members who have different views of whether this is a good idea or not?

Mr. Duguid: One of the advantages of having served on a previous council is that when you're going through reforms, everybody on that council knows you personally. You can rest assured that I've spent a fair amount of time talking to a number of my former colleagues. They don't all share the same opinion. In fact, I have two of my former colleagues who are serving in this Legislature with us: Mr. Berardinetti and Mr. Balkissoon.

The Chair: Any further debate? Seeing none, all those in favour of section—

Mr. Tabuns: Recorded vote.

Ayes

Brownell, Duguid, Lalonde, Rinaldi.

Nays

Hardeman, Tabuns.

The Chair: That's carried.

I'm looking down at sections 151 to 154. There are no amendments. Shall they carry? All those in favour? Sorry; Mr. Hardeman.

Mr. Hardeman: There are no amendments, but there is discussion. I have a problem with section 152. Again, the same problem exists. This is where we micromanage how we structure council, and now we're going to micromanage how we deal with the boards and commissions: "(g) providing for matters that, in the opinion of the minister, are necessary or desirable to allow the city to act as a local board, to exercise the powers of a local board or to stand in the place of a local board for any purpose." So the minister can, by regulation, replace a local board.

I just want to point out that this tendency in these sections to override the permissiveness of the bill is being overridden by the regulatory powers that the minister can make at any given time and take us away from this self-governance model that the minister spoke about.

Now you can have both sections in the same one.

The Chair: Okay. Sections 152 to 154: Any discussion? All those in favour? All those opposed? That's carried.

Part V: Accountability and transparency. Mr. Tabuns, you have the motion: page 46.

Mr. Tabuns: Yes, but again, it speaks to matters around the Child and Family Services Act, and given we've settled that, I'll just withdraw it.

The Chair: You'll withdraw it?

Mr. Tabuns: Yes.

The Chair: Okay. Shall section 155 carry? All those in favour? All those opposed? That's carried.

Mr. Tabuns, you have the next motion.

Mr. Tabuns: I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 155:

"Extended application

"155.1 Sections 164 and 165 (Registration re lobbying), 166 to 172 (Ombudsman) and 173 to 177 (Auditor General) apply, with necessary modifications, with respect to the board of health continued by section 400 and the library board continued by section 407."

Simply, lobbying registration requirements and Ombudsman functions and Auditor General duties apply to the board of health and library board.

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The Chair: Any discussion?

Mr. Duguid: We'll not be supporting that.

Mr. Hardeman: For clarification, it's just an add-on, that presently those officers do not apply to those boards?

Mr. Tabuns: Currently, that's right. This would make sure that lobbying requirements have consequence for the board of health as well as the library board, and Ombudsman functions and Auditor General duties.

The Chair: Any further discussion?

All those in favour of the motion? All those opposed? That's lost.

Sections 156 and 157: There are no amendments. Shall they carry? All those in favour? All those opposed? That's carried.

Next is section 158.

Mr. Rinaldi: I move that subsection 158(1) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out and the following substituted:

"Responsibilities

"(1) The commissioner is responsible for performing in an independent manner the functions assigned by city council with respect to the application of the code of conduct for members of city council and the code of conduct for members of local boards (restricted definition) and with respect to the application of any procedures, rules and policies of the city and local boards (restricted definition) governing the ethical behaviour of members of city council and of local boards."

The Chair: Any discussion? Seeing none, all those in favour of the—sorry, Mr. Hardeman, are you voting or asking a question?

Mr. Hardeman: I'm just asking for a clarification of what's changing.

The Chair: Mr. Duguid, did you want to respond to that?

Mr. Duguid: Yes. It expands the functions of the Integrity Commissioner that can be assigned by council to include the application of code of conduct and procedures, rules and policies governing the ethical conduct of local board members.

The Chair: Any further discussion? All those in favour of the motion? All those opposed. That's carried.

Mr. Tabuns, your next motion is a very good one and clearly is a duplicate of that first one.

Mr. Tabuns: Thank you for the positive reinforcement. I withdraw it.

The Chair: I want you to feel positive.

Mr. Tabuns: I can tell that.

The Chair: Thank you for withdrawing that. Yours is the next one.

Interjection.

Mr. Tabuns: I knew the committee had a purpose.

I move that section 158 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following subsection after subsection 158(1):

"Reports

"(1.1) City council may require the commissioner to make reports about the conduct of members of local

boards (restricted definition) to council instead of to the board.”

It just flows from the previous motion applying the code of conduct to members of local boards. This lets council decide whether those reports by the Integrity Commissioner come to the council itself or to the local boards.

The Chair: Any discussion?

Mr. Duguid: I know that Mr. Hardeman will ask for an explanation, so I might as well give it. As far as we can tell—we had a little bit of difficulty figuring out exactly why they wanted this. They already can require the Integrity Commissioner to do this, because they will define the authority of the Integrity Commissioner. We don’t think it’s necessary, and unless there’s another reason we’re not aware of, we can’t support it.

The Chair: Any further debate?

Mr. Hardeman: I guess, in opposition to the motion, I gather from it that this could allow council to ask for a report that the board had not yet seen.

Mr. Tabuns: Possibly, yes.

Mr. Hardeman: Other than that, what would be the reason you would want to do this? They can already appoint, and it can come through the board to council. Would this just be to avoid the board?

Mr. Tabuns: No. As I understand it, it’s simply is give the city the power to go one way or the other. I don’t know if it means that they would avoid the board. It occurs to me that if you had a board that had gone sour and you didn’t have confidence in the chair or the members of that board, the council could, on its own, review the report of the Integrity Commissioner and take action as necessary.

The Chair: Any further debate?

All those in favour of the motion? All those opposed? That’s lost.

Mr. Tabuns, you have the next motion.

Mr. Tabuns: Right. I’ll just note that my motion is similar to government motion number 54. I’ll move my motion, and then the government can take whatever action necessary.

I move that section 158 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following subsections:

“Duty to furnish information

“(5) The city and its local boards (restricted definition) shall give the commissioner such information as the commissioner believes to be necessary to perform his or her duties under this part.

“Access to records

“(6) The commissioner is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the city or a local board (restricted definition) that the commissioner believes to be necessary to perform his or her duties under this part.

“No waiver of privilege

“(7) A disclosure to the commissioner under subsection (5) or (6) does not constitute a waiver of solicitor-client privilege, litigation privilege or settlement privilege.”

The Chair: Any discussion?

Mr. Duguid: We support the majority of it, but the wording that we have in 54, we feel, is a little clearer, and there’s an aspect of this—I’m trying to remember which one it was. I think it was the final subsection, (7), which talked about solicitor-client privilege, litigation privilege and settlement privilege. We’re not sure that’s actually needed or even a good idea.

Mr. Tabuns: I say call the vote, Madam Chair.

The Chair: Any further discussion?

All those in favour of the motion? All those opposed? That’s lost.

Shall section 158, as amended, carry?

All those in favour? All those opposed? That’s carried.

Mr. Tabuns: Don’t you have an amendment to 158 coming up?

The Chair: No.

Mr. Tabuns: For your purposes, don’t you want to reject my amendment and then go to the amendment of the government?

The Chair: I’m going to go in order, because it’s not exactly the same. There is enough difference, and I have to go through my road map here. I’ll go in the ditch if I don’t follow the rules the clerk has given me.

Section 159 is a government motion.

Mr. Brownell: I move that clauses 159 (1)(a) and (b) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out and the following substituted:

“(a) in respect of a request made by city council, a member of council or a member of the public about whether a member of council or of a local board (restricted definition) has contravened the code of conduct applicable to the member; or

“(b) in respect of a request made by a local board (restricted definition) or a member of a local board (restricted definition) about whether a member of the local board (restricted definition) has contravened the code of conduct applicable to the member.”

Mr. Duguid: This just expands the number of triggers for an inquiry. It currently has city council or a member of council. This expands it to include a member of the public as being able to request an investigation.

The Chair: Any discussion? Seeing none, all those in favour of the motion? All those opposed? That’s carried.

The next motion is yours, Mr. Tabuns.

Mr. Tabuns: Madam Chair, this is effectively the same as the motion we just voted on, and on that basis, I’ll withdraw.

The Chair: Thank you.

The next motion is a government motion.

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Mr. Rinaldi: I move that subsection 159(3) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out and the following substituted:

“Information

“(3) The city and its local boards (restricted definition) shall give the commissioner such information as the commissioner believes to be necessary for an inquiry.

“Same

“(4) The commissioner is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the city or a local board (restricted definition) that the commissioner believes to be necessary for an inquiry.

“Penalties

“(5) City council may impose either of the following penalties on a member of council or of a local board (restricted definition) if the commissioner reports to council that, in his or her opinion, the member has contravened the code of conduct:

“1. A reprimand.

“2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days.

“Same

“The local board (restricted)—

The Chair: Could you read the number in, Mr. Rinaldi?

Mr. Rinaldi: Sorry.

“(6) The local board (restricted definition) may impose either of the penalties described in subsection (5) on its member if the commissioner reports to the board that, in his or her opinion, the member has contravened the code of conduct, and if city council has not imposed a penalty on the member under subsection (5) in respect of the same contravention.”

The Chair: Any discussion?

Mr. Duguid: The effect of this amendment was a request from the city of Toronto. It provides the Integrity Commissioner with the right to obtain information from the city and local boards for the purposes of an inquiry. It also provides city council or a local board with the ability to impose certain penalties on a member of a local board who has contravened the code of conduct. It stipulates that the local board cannot impose a penalty if council has already done so.

Mr. Hardeman: A question on the ability to impose penalties on the city council based on a commissioner's report: Is that the same authority that they would have on one of their own? If the Integrity Commissioner found an infraction on a member of council, does city council have the same ability to impose these penalties on them?

Mr. Duguid: Yes. The original drafting didn't include local board as having the ability but council as having the ability to impose the penalty. This will also allow the local board to impose the penalty. But if council has already imposed a penalty, then the local board cannot.

Mr. Hardeman: If I could ask one further question, on the penalty section, if we look at the Integrity Commissioner provincially, the ability is in the hands of the Integrity Commissioner to decide the size and the

need for the penalty. Why is it in the hands of city council here, after the Integrity Commissioner's report?

Mr. Duguid: The Integrity Commissioner doesn't impose a penalty but can recommend a penalty. Let me just check the section here to make sure I've got the right wording. The Integrity Commissioner can indicate that a member has contravened the code of conduct, and it's up to council to impose a penalty. The Integrity Commissioner can recommend. So council would still have to issue either a reprimand or a suspension of remuneration for the member, which, according to this act, is for a period of up to 90 days. That would be a decision of council.

Mr. Hardeman: I understand, in this case, it is in council's hands. I guess the question is if any consideration has been given to making it the same as it is provincially, which is that the penalty is also in the hands of the Integrity Commissioner, not in the hands of the Legislature.

Mr. Duguid: I'm not aware of any such discussion. It may have, but I'm not aware of any such discussion.

The Chair: Further debate? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Tabuns, you have the next motion.

Mr. Tabuns: Madam Chair, since it's largely covered by the government motion, I will withdraw.

The Chair: Thank you. Committee, shall section 159, as amended, carry? All those in favour? All those opposed? That's carried.

There are no amendments for section 160. Shall section 160 carry? All those in favour? All those opposed? That's carried.

Next government motion: Mr. Brownell.

Mr. Brownell: I move that subsections 161(2) and (3) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out and the following substituted:

“Report about conduct

“(2) If the commissioner reports to city council or to a local board (restricted definition) his or her opinion about whether a member of council or of the local board has contravened the applicable code of conduct, the commissioner may disclose in the report such matters as in the commissioner's opinion are necessary for the purposes of the report.

“Publication of reports

“(3) City council and each local board (restricted definition) shall ensure that reports received from the commissioner by council or by the board, as the case may be, are made available to the public.”

The Chair: Any discussion?

Mr. Duguid: This is just consequential to the amendments we made in section 159. It just makes this section consistent with that with regard to the local board.

The Chair: Any further debate? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 161, as amended, carry? All those in favour? All those opposed? That's carried.

There are no amendments in sections 162 to 164. All those in favour? Those opposed? That's carried.

Section 165: government motion. Mr. Flynn?

Mr. Flynn: I move that section 165 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following paragraphs:

"6. Establish a code of conduct for persons who lobby public office holders.

"7. Prohibit former public office holders from lobbying current public office holders for the period of time specified in the bylaw.

"8. Prohibit a person from lobbying public office holders without being registered.

"9. Impose conditions for registration, continued registration or a renewal of registration.

"10. Refuse to register a person, and suspend or revoke a registration.

"11. Prohibit persons who lobby public office holders from receiving payment that is in whole or in part contingent on the successful outcome of any lobbying activities."

The Chair: Any discussion?

Mr. Tabuns: Generally speaking, I think that this is a right direction, and I have some additional amendments to add on the next page.

One question that was raised with me—and I would like to have, I assume through you, the opinion of legislative counsel or the parliamentary assistant—is that there's concern that breaches of the code of conduct may not be enforceable, and I need to know whether breaches of the code of conduct can result in the penalties set out in 9 and 10. Is there any legal problem there? Is enforceability solid?

The Chair: Do you want to ask that of legislative staff?

Mr. Duguid: I think it would be best to refer it to legislative staff, given that it's a legal question.

The Chair: Is there someone here from the ministry who wants to respond to that?

Mr. Jeffrey Levitt: My name is Jeffrey Levitt. I'm with the legal branch of the Ministry of Municipal Affairs and Housing.

The question, as I understand it, was the code of conduct which is to be established, its enforcement and the consequences. Under some of the other provisions which are in this same motion, including, for example, conditions for registration, it's conceivable that a condition of maintaining a registration is complying with the code of conduct. Non-compliance with the code of conduct thereby would be a breach of a condition of registration and lead to possible enforcement action through the registrar.

Mr. Tabuns: So possible enforcement action through simply refusing to allow them to carry on their trade; they wouldn't be able to lobby anymore, which would be of consequence to some.

Mr. Levitt: The enforcement could be, as it says in section 10, the suspension or revocation. Assuming the

bylaw requires registration to engage in the activity of lobbying, then it would conceivably have that effect.

Mr. Tabuns: So you're very comfortable that enforcement is possible, doable, within the framework of this legislation.

Mr. Levitt: Yes.

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Mr. Tabuns: On the record; that's good.

Mr. Hardeman: I want to follow that same vein. It seems to me that the total reason for a lobbying registry is so we know who's out there trying to convince politicians to make decisions in the best interests of someone else—that's the basic thrust of lobbying. The reason we need a registry is so the public would know that an individual is in that activity. If the penalty for contravening the code of conduct is that you no longer are registered, how do you proceed to enforce no longer lobbying? It would seem to me that the people who are the problem are the same group that exists before you have a registry. If you don't know who is lobbying, then the public will never know whether lobbying is taking place. If somebody is deregistered, it doesn't mean they're not still playing golf. How do we know they're no longer lobbying? I don't know how you would enforce that. I guess that's really in the same vein as my colleague was asking about. How do you have enforcement of that if they contravene the code of conduct, other than financial penalties?

Mr. Levitt: If I understand, the question is, "How do you know if someone is contravening this particular legislation, the requirement to register?" I'm not sure that's any different than how you know anybody is contravening—people contravening any kind of legislation is a general problem. I suppose the same enforcement techniques are used in other instances where people are supposed to do things and don't; they would use similar mechanisms.

Mr. Hardeman: My concern is just that I don't know how we define whether you're a lobbyist if you're not registered and you were previously a lobbyist.

Mr. Levitt: One aspect might be that the city is empowered to define what lobbying is. I guess there are two sides to lobbying. The person being lobbied may be aware that the person is not registered and may therefore take appropriate steps. The activity has two sides to it, and that may assist in compliance and enforcement.

Mr. Tabuns: Just so I'm very clear and so it's on the record, this legislation will allow the city to bar from lobbying—bar from registration to lobby—a person who violates the code of conduct for those who lobby public office holders. Is that correct?

Mr. Levitt: The legislation is empowering, and what it does will depend on how the city decides to set it up. But there is authority to impose conditions on registration, to refuse to register, to suspend or revoke a registration, and also to have conditions on people becoming registered in the first place. How it's ultimately enforced and where it goes, I guess, will depend on what the city chooses to do with this authority.

Mr. Tabuns: The empowerment here in no way would make it difficult for the city of Toronto to say that compliance with the code of conduct is a necessary condition for registration, and thus, if someone violates the code of conduct the city sets out, the city will then be able to say, “You can no longer lobby here because we will not register you.”

Mr. Levitt: Again, it depends on how the city decides to implement it. But as you can see in paragraph 9, the ability to impose conditions is wide and there are no restrictions in the legislation. So it’s not explicitly excluded, and there’s considerable breadth there.

Mr. Tabuns: Okay. So the explicit room gives the city the power to say, “If you, a lobbyist, violate our code of conduct, we will bar you from lobbying our members of council.”

Mr. Levitt: The answer to that question probably depends on what the code of conduct is, how the city implements it and the process that’s around there. But there is wide authority there for the city to set up that type of legislative infrastructure.

Mr. Tabuns: Fine.

Mr. Hardeman: In the same vein, the legislation does require anyone who is lobbying the city to be registered, right?

Mr. Levitt: Section 165—the initial parts—permits the city to provide for a system of registration. So the city is required to establish and maintain a registry where registration returns filed by persons lobbying will be filed, but the city is empowered to design the registration system itself.

Mr. Hardeman: Empowered, but not mandated.

Mr. Levitt: It’s basically a permissive authority. However, the registry itself is mandatory, so that would seem to indicate that there’s an expectation that returns would be filed. But the system itself is within the city’s powers.

Mr. Hardeman: The problem I have is that it’s permissive for the city to set up, but then, by law, if they set it up, does that mean that all people who do must be registered? And what is in there to deal with non-registered lobbying if the city has decided to exercise the authority to set up a registry?

Mr. Levitt: I guess the answer to the first question is that the city will be making those decisions about the type of people who have to register and the obligation, but people who are supposed to have complied with whatever system is developed and do not comply will be subject to the usual range of sanctions for people who violate city bylaws.

Mr. Hardeman: The city would sanction the people for non-compliance?

Mr. Levitt: There would be the possibility. What I’m trying to say in this case is that this would be an individual who doesn’t comply with a requirement, a bylaw of the city, and there may well be other people who don’t comply with other bylaws, who are supposed to do things that they don’t—the same range of enforcement would be available to the city. For instance, non-registration—not

to comply with the registration bylaw—could conceivably be made an offence. It might be that the city has the power to make non-compliance with its bylaws an offence.

Mr. Hardeman: Under the Provincial Offences Act?

Mr. Levitt: No. I believe that’s under the City of Toronto Act itself, under this act. So there may be the possibility that if someone has contravened a bylaw requiring registration, if it’s made an offence, there might be the possibility of enforcement action that way.

Mr. Hardeman: It becomes important whether it’s— if it’s just under the City of Toronto Act, then if you look at other municipal acts, if the enforcement is the same, the recourse is always, “Quit doing what you’re doing, because the bylaw says you can’t do it,” but there’s no recourse for a penalty for having done it. You’re suggesting that under this one there will be the ability to impose a penalty?

Mr. Levitt: In the same way that anybody who doesn’t comply with a bylaw, and it’s an offence, could be prosecuted for not complying with the bylaw, or I believe there is the ability to have injunctive relief as well for non-compliance with the bylaw. But I guess a typical penalty for non-compliance with a bylaw is that the person is charged with the offence of not complying with the bylaw—the provincial offence.

The Chair: Any further questions?

All those in favour of the motion?

Mr. Tabuns: A recorded vote.

Ayes

Brownell, Duguid, Flynn, Hardeman, Lalonde, Rinaldi, Tabuns.

The Chair: It’s unanimous. That carries.

The next motion is yours, Mr. Tabuns.

Mr. Tabuns: I move that section 165 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following paragraphs—and for those who are following the text, I have modified it:

“12. Prohibiting persons from making payments to persons who lobby a public office holder that are in whole or in part contingent on the successful outcome of any lobbying activities.

“13. Prohibit persons who lobby a public office holder from engaging in fundraising activities on his or her behalf.

“14. Regulate the lobbying activities of former public office holders.”

1800

So I’ve eliminated the duplicates with the government motion on page 57. I note that the city of Toronto has gone through the whole process of the Bellamy inquiry. People are somewhat more sensitized to and aware of—

The Chair: Mr. Tabuns, can I just get a clarification for the clerk’s edification? You’ve taken your original motion and taken paragraph 6 out. What happened to paragraph 10?

Mr. Tabuns: I've taken it out as well, because there's a section of the previous motion—

The Chair: So you've changed paragraphs 7, 8 and 9 to 12, 13 and 14?

Mr. Tabuns: Correct.

The Chair: All right. Sorry.

Mr. Tabuns: No problem. So having gone through the Bellamy inquiry and having learned a lot from that, the city has asked for a number of amendments beyond those put forward by the government. I think they're reasonable and I'd ask that they be adopted.

The Chair: Any further discussion?

Mr. Hardeman: What number are we talking about?

The Chair: His motion is page 58, and what he's tried to do is complement the previous motion by changing the numbering on his. His motion read from paragraphs 6 to 10. He's removed paragraphs 6 and 10 and changed paragraphs 7, 8 and 9 to 12, 13 and 14, so everybody understands.

Mr. Duguid: I know the intent is good here. In looking at these, a few things jump out: prohibiting people who lobby to engage in fundraising activities. I'm not so sure that that's not an infringement of a fundamental right of people to contribute to the political process. I'm not sure if constitutionally—in fact, I've asked our lawyers. They weren't sure either whether constitutionally we could do that or not. I don't know if I would support it.

“Regulate the lobbying activities of former public office holders....” How the heck do you do that? Do you follow people around? They could be lobbying another level of government. In here, we have the ability to provide time that must pass before they can lobby their own government. We have some difficulties with this and won't be supporting it.

Mr. Hardeman: I can't support these. I think they're very close to the edge of the total purpose for lobbying. The people who are doing it obviously are not doing it because it was a personal interest; it was in someone else's interest. I would suggest that most of us do what we do in life to get paid and to make a living. To say that that can't be done doesn't make a lot of sense. I think this is going well beyond the public's right to know that lobbying is taking place.

Mr. Tabuns: Without belabouring the point, lobbying can be quite powerful, particularly if the lobbyist in question is a major fundraiser for a politician or a group of politicians. I remember the famous story in the *Globe and Mail* of a reporter walking past an office and hearing a lobbyist scream at one councillor, “Well, that's the last batch of baseball tickets I'm selling for you, given the position you have taken on this particular law.” I think that having a person come into an office and make an argument about a particular piece of legislation and set out the reasons why the legislation is useful and valid—that's life. That's part of the political process. But the extent that the lobbyist deepens their power in the relationship with a politician by being a major source of

funding moves us away from argument, logic and advocacy to a deeper influence that can be problematic.

Mr. Hardeman: I do believe that the onus of that is on the politician, not on the people who are putting forward their position. They have a job to do, which is to present the case to get a decision. The politicians have to make the decision whether they're taking that in an unethical way. The registry is meant to aid the public's right to know who's doing what and why they're doing it. I think that would go far enough. I can't support this.

The Chair: Any further debate? Seeing none, all those in favour of the motion?

Mr. Tabuns: A recorded vote.

Ayes

Tabuns.

Nays

Brownell, Duguid, Flynn, Lalonde, Rinaldi.

The Chair: That's lost.

Shall section 165, as amended, carry? All those in favour? All those opposed? That's carried.

Section 165.1: government motion.

Mr. Lalonde: I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 165:

“Prohibition on contingency fees

“165.1 Without limiting sections 7 and 8, those sections authorize the city to prohibit a person on whose behalf another person undertakes lobbying activities from making payment for the lobbying activities that is in whole or in part contingent on the successful outcome of any lobbying activities.”

The Chair: Any discussion?

Mr. Duguid: This just clarifies the prohibition of contingency fees or success fees. That's all it does.

The Chair: Any further discussion? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 165.1 carry? All those in favour? All those opposed? That's carried.

Government motion page 60: Mr. Rinaldi.

Mr. Rinaldi: I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 165.1:

“Registrar for lobbying matters

“165.2(1) Without limiting sections 7 and 8, those sections authorize the city to appoint a registrar who is responsible for performing in an independent manner the functions assigned by city council with respect to the registry described in subsection 164(1) and the system of registration and other matters described in section 165.

“Powers and duties

“(2) Subject to this part, in carrying out these responsibilities, the registrar may exercise such powers and

shall perform such duties as may be assigned to him or her by city council.

“Delegation

“(3) The registrar may delegate in writing to any person, other than a member of city council, any of the registrar’s powers and duties under this part.

“Same

“(4) The registrar may continue to exercise the delegated powers and duties, despite the delegation.

“Status

“(5) The registrar is not required to be a city employee.”

The Chair: Any discussion? Seeing none, all those in favour of the motion? All those opposed? That’s carried.

Mr. Tabuns, I believe the next one is withdrawn. It’s a duplicate.

Mr. Tabuns: Withdrawn.

The Chair: Thank you.

Shall section 165.2 carry? All those in favour? All those opposed? That’s carried.

I gather there’s a replacement motion on section 165.3. Mr. Hardeman.

Interjection.

The Chair: We can go more quickly, if people cooperate.

Mr. Hardeman: No, I think the time of adjournment has arrived.

The Chair: It is after 6. Since it’s after 6, we’re going to have to adjourn.

Mr. Duguid: Madam Chair, we’re willing to continue—

The Chair: Are the opposition willing to continue? Would you like to continue so we can get through this bill?

Mr. Hardeman: No. I can only sit so long.

The Chair: Okay. Committee, we’re going to have to adjourn now, as it is after 6 of the clock. The next time that we’re going to be able to sit is June 12, as we have already committed to sitting on another bill for this committee. I’d like to tell the committee that on this issue this committee stands adjourned until—

Mr. Duguid: I would expect probably that the House leaders may have some discussion.

The Chair: Well, until further notice, we’re adjourned on clause-by-clause on this bill.

The committee adjourned at 1810.

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Monday 29 May 2006

Journal des débats (Hansard)

Lundi 29 mai 2006

**Standing committee on
general government**

Stronger City of Toronto
for a Stronger Ontario Act, 2006

Residential Tenancies Act, 2006

**Comité permanent des
affaires gouvernementales**

Loi de 2006 créant
un Toronto plus fort
pour un Ontario plus fort

Loi de 2006 sur la location
à usage d'habitation

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 29 May 2006

Lundi 29 mai 2006

*The committee met at 1002 in room 151.*STRONGER CITY OF TORONTO
FOR A STRONGER ONTARIO ACT, 2006LOI DE 2006 CRÉANT
UN TORONTO PLUS FORT
POUR UN ONTARIO PLUS FORT

Consideration of Bill 53, An Act to revise the City of Toronto Acts, 1997 (Nos. 1 and 2), to amend certain public Acts in relation to municipal powers and to repeal certain private Acts relating to the City of Toronto /
Projet de loi 53, Loi révisant les lois de 1997 Nos 1 et 2 sur la cité de Toronto, modifiant certaines lois d'intérêt public en ce qui concerne les pouvoirs municipaux et abrogeant certaines lois d'intérêt privé se rapportant à la cité de Toronto.

The Chair (Mrs. Linda Jeffrey): Good morning. The standing committee on general government is called to order. We meet today to resume clause-by-clause consideration of Bill 53, the Stronger City of Toronto for a Stronger Ontario Act.

Committee, you will recall we were on section 165 of the bill, and we had just voted on a new section 165.2. We were in the midst of handing out a government amendment on page 62 that creates a new section 165.3.

Mr. Duguid, are you going to read that motion, or is somebody else?

Mr. Brad Duguid (Scarborough Centre): I'll do the first one here, while everybody else is getting settled.

I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 165.2:

"Inquiry by registrar

"165.3(1) This section applies if the registrar conducts an inquiry under this part in respect of a request made by city council, a member of council or a member of the public about compliance with the system of registration described in section 165 or with a code of conduct established under that section.

"Powers on inquiry

"(2) The registrar may elect to exercise the powers of a commission under parts I and II of the Public Inquiries Act, in which case those parts apply to the inquiry as if it were an inquiry under that act.

"Duty of confidentiality

"(3) Section 160 applies, with necessary modifications, with respect to the registrar and every person acting under the instructions of the registrar in the course of conducting an inquiry.

"Report

"(4) If the registrar makes a report to city council in respect of an inquiry, the registrar may disclose in the report such matters as in the registrar's opinion are necessary for the purposes of the report.

"Publication of reports

"(5) City council shall ensure that reports received from the registrar are made available to the public.

"Testimony

"(6) Neither the registrar nor any person acting under the instructions of the registrar is a competent or compellable witness in a civil proceeding in connection with anything done when conducting an inquiry.

"Reference to appropriate authorities

"(7) If the registrar, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other act or of the Criminal Code (Canada), the registrar shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to city council."

In summary, what this does is it defines the powers of the lobbyist registrar, if the city appoints a lobbyist registrar.

The Chair: Any debate?

Mr. Ernie Hardeman (Oxford): I'm kind of confused. I wonder why a whole new section would be added, which would appear to me in just listening to it to have quite far-reaching legislative authority, and why that wasn't in the bill before. Is there something that's changed in the registrar, or in the lobbyist part of the act, that requires this to be put in?

Mr. Duguid: No. It should have been in before. The bill says that the city has to set up a lobbyist registry. What we didn't do in the act originally was define who's going to oversee that lobbyist registry. It was brought to our attention that we're going to have to give the city the authority to set up somebody to be in charge of it and give them similar powers to some of the other officials that we've mandated the city to set up: the Auditor General, the Integrity Commissioner, an Ombudsman, those kinds of things. We didn't do the same thing for a lobbyist registrar. That's something that the city would

need to appoint to oversee their lobbyist registry. That was an oversight.

Mr. Hardeman: If I could go on then, in "Duty of confidentiality" in subsection (3), "Section 160 applies, with necessary modifications." What would be the necessary modifications? It would seem to me, if you're setting a standard, that the standard would not be set by leaving it open to someone else adding modifications.

The Chair: Mr. Duguid, do you want some staff help answering this question?

Mr. Duguid: I don't think so. I think we want to give the city some flexibility too, as they're setting up this position, to further define it and to assign the lobbyist registrar what duties they see fit. What we've done is sort of given an outline of what the position would entail, but there may be other details the city might want to place upon this lobbyist registrar.

Mr. Hardeman: Maybe, Madam Chair, I could get somebody from the legal branch. It would seem to me, given the words "with necessary modifications," that the city gets to decide what those modifications are. In fact, they could modify it to the extent that 160 does not apply because there would be nothing left of it to apply.

The Chair: Could somebody from staff come forward and help answer this question? Legislative counsel? Are you happy with legislative counsel at this table answering?

Mr. Hardeman: Yes, that's fine. Anybody can help me out here. I'm totally at a loss.

Ms. Laura Hopkins: The reference to "with necessary modifications" is a drafting technique. It doesn't give the city authority to make necessary modifications. What it does is enable us to read section 160, substituting references to the commissioner which are in that section with references to the registrar, and persons acting under the instructions of the commissioner would be person acting under the instructions of the registrar. Those would be the only modifications.

Mr. Hardeman: Thank you very much.

The Chair: Any further debate? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Tabuns, you have a motion that is—

Mr. Peter Tabuns (Toronto-Danforth): My motion is the same as government motion number 62, so I will withdraw that.

The Chair: Thank you.

Mr. Hardeman: I'm starting to think they're ganging up on me. The government and the New Democrats seem to have the same motions—

The Chair: I can't believe that they would do that. I think they're just working well together. I think this is a result of that.

Shall section 165.3 carry? All those in favour? All those opposed? That's carried.

Mr. Tabuns, you have number 64.

1010

Mr. Tabuns: I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 165.3:

"Penalties

"165.4 If the registrar reports to city council that, in his or her opinion, a person has contravened registration requirements established under section 165 or the code of conduct for persons who lobby public office holders, the council may impose either or both of the following penalties after considering the registrar's report:

"1. Remove the person's name from the registry described in subsection 164(1).

"2. Prohibit the person from lobbying public office holders for a period of one year or less."

This in fact gives some penalty for contravening the regulations or the code of conduct around registration of lobbyists and, I think, would actually be necessary to have lobbyists treat the code of conduct with respect, let us say.

The Chair: Mr. Hardeman?

Mr. Hardeman: I think this was part of the discussion when we were discussing the actual provision of the lobbyists' registry. I never really got it clarified as to what happens to your lobbying activity if you're not registered. It's one thing to suggest that lobbyists must register, but how do you prevent people from lobbying if you've taken them off the registry? What are the qualifications to be a lobbyist? You say you have to be registered, but you are and then the city doesn't let you register any more, how do you then enforce the non-lobbying? I just can't understand how that would work. What's the onus on people to stay registered?

Mr. Tabuns: I think the onus on people is the discomfort that a city councillor would have in talking to anyone who is not registered who is barred from lobbying. I think it would discredit any councillor who in fact engaged in conversation around these issues with a lobbyist.

Mr. Hardeman: Maybe it's wording and maybe I'm way off, but the question becomes, if they're not registered—they're taken off the registry—does that mean they cannot lobby? To me, I don't know what's in the bill that actually says that you must be registered to be a lobbyist. The bill says you must register before you can lobby, so you've done your thing, you're registered; then, if the city takes you off the list, do they have the ability to say, "You are no longer a lobbyist"?

Mr. Tabuns: In fact, this says that you are no longer a lobbyist. You're prohibiting from lobbying public office holders.

Mr. Hardeman: How do they do that? It's a not a licensed activity.

Mr. Tabuns: No, it isn't a licensed activity; it's a political activity. If councillors are regularly reporting their contacts with those who come in to talk to them about bylaws or other actions on the part of the city, they know who is on the lobbyist register and who is not. They are not going to want to show on their list of people they've met with the name of a person who has been prohibited from lobbying.

City hall is a fairly small place. People notice who's going in and out of what office. It becomes a problem

fairly quickly and fairly visibly when you have someone who's prohibited from lobbying who's working the hallways.

The Chair: Any further questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Sections 166 to 177: There are no changes or amendments. All those in favour of the motion? All those opposed? That's carried.

Government motion on page 65, Mr. Brownell.

Mr. Jim Brownell (Stormont-Dundas-Charlottenburgh): I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 177:

"Testimony

"177.1 Neither the Auditor General nor any person acting under the instructions of the Auditor General is a competent or compellable witness in a civil proceeding in connection with anything done under this part."

The Chair: Any comments or questions? All those in favour? All those opposed? That's carried.

Mr. Tabuns, I believe the next motion is a duplicate.

Mr. Tabuns: I agree, Madam Chair, and thus withdraw it.

The Chair: Great minds think alike.

Shall section 177.1 carry? All those in favour? All those opposed? That's carried.

Sections 178 through 183 have no changes. All those in favour of those sections? All those opposed? That's carried.

Government motion, page 67, Mr. Lalonde.

Mr. Jean-Marc Lalonde (Glengarry-Prescott-Russell): I move that subsection 184(4) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out.

The Chair: Comments or questions?

Mr. Hardeman: I'm just trying to find out what the section is. If somebody could tell me what the section is that we're striking out—what the wording is rather than just the number.

The Chair: Mr. Duguid, could you—

Mr. Duguid: Yes, it's section 184. The way the bill was originally written, it would have required an amendment to a procedural bylaw for council to designate a member of council other than the mayor to preside at a council meeting. This removes that section, and I just want to verify—I'll just take a look at the original section here.

Yes. The section as originally written said that the procedural bylaw "may," with the consent of head of council, designate a member of city council other than the head of council to preside at meetings of city council. I think Toronto councillors thought that this was a little onerous to have to go through a procedural bylaw change to appoint someone to chair a council meeting. The tradition of Toronto council is, the mayor doesn't have to always be in the seat; other people can be as well. It's just to make it a little bit easier to ensure that they don't have to go through a procedural bylaw change or amend

the procedural bylaw when they designate a member of council other than the mayor to preside at council meetings.

One of the things this act does is, it gives the city the ability to appoint, if you want, a speaker or a permanent council chair. It has to be a member of council, but they have the ability to do that, and it's a direction that they've indicated a likelihood of pursuing.

Mr. Hardeman: I guess my concern is that, as it's presently written, what we're talking about striking out is that permissive authority by which council can pass a bylaw to allow the appointing of a head of council other than the mayor for times when the mayor is absent. If we take that out, what is there that allows council to do that? Council doesn't pick the mayor; the people do. Without this section, how do they then pass a bylaw that allows someone other than the mayor to fill the seat?

Mr. Duguid: What this does is, it allows council to determine who their speaker is going to be, if they choose to go that route. It's something that was recommended to them by the Buller report because of the onerous job of mayor of the city and the aspects in terms of governance responsibilities and now, with this legislation, some enhanced governance responsibilities. The theory is that it might be a good idea for council to appoint a speaker or a chairperson to chair their council meetings, and this just allows them to do it without having to amend their procedural bylaw. It was a request from council to just make sure that it was clear that they'd be able to appoint a chair or a speaker to chair their meetings. I'm not convinced they couldn't have done it anyway, but they wanted this to make sure it was clear, and we're happy to oblige.

Mr. Hardeman: I guess I need a legal opinion too. It would seem to me that if it's in the original draft as a discretionary authority of council and you take discretionary authority away from council, does that mean they no longer have it, or does that mean it's wide open and they can do anything they like? It seems to me this may include that so council could have a procedural bylaw that says that Brad Duguid will be the mayor in place of the mayor in case the mayor doesn't show up for the meeting. If you take that out, it means in my mind that at every council meeting, council would have to decide who of those present would be head of council. I think it's going to make it more onerous than helpful because it is so permissive.

I wonder if I could get an opinion from legislative counsel as to what they believe?

1020

Ms. Hopkins: Section 187 of the new act, which we haven't yet arrived at, addresses the subject of who presides at meetings of council; so section 187 governs the decisions about who the presiding person is.

I don't think the removal of this subsection would have the result of requiring council to make a decision on a meeting-by-meeting basis.

Mr. Hardeman: But it would if section 187 wasn't there. I have to deal with the bill as we're proceeding.

We're taking out the section that says that council may appoint a replacement, and I don't see any reason to strike it out. What's the advantage of striking it out?

Ms. Hopkins: I need to ask for the expert help of a lawyer from municipal affairs.

Mr. Scott Gray: Scott Gray, from municipal affairs, legal branch. The purpose of this amendment, in coordination with other amendments, is simply that the city said, "We don't want to have to amend our procedural bylaw to appoint an alternative presiding officer." So instead of making it a requirement that you do it in the procedural bylaw, we're making it a stand-alone bylaw, which is a motion that we're getting to two or three from now.

You're quite right: If this was taken out and the other section wasn't put it, then they wouldn't have this authority. But this section is presuming that if you remove the power here, you'll have the good sense to put it in two or three motions later, when it's not required to be part of the procedure bylaw.

The Chair: Any further questions?

Mr. Hardeman: I gather we're going to strike it out—we could go on forever on it—but it would seem to me that section 187 says exactly the same thing, only it's not discretionary anymore. We'll discuss that when we get to section 187.

Mr. Gray: It's not mandatory that it be in the procedure bylaw. They're given discretion to do it, but they don't have to do it by amending the procedure bylaw. That's what we're trying to achieve in that motion, simply to say that it doesn't have to be done through an amendment to the procedure bylaw; you can just pass a bylaw to do it.

Mr. Hardeman: I guess that's my point. My real thrust here is that section 185 is a much better approach and gives much more discretion to city council than section 187, because 187 says, "It will be the head of council or one designated by a procedural bylaw," and section 185 says, "They may be appointed or they may not be appointed." I think when we're finished, 187 is the wrong one, not 185.

Mr. Gray: I know we're not at 187, but 187 does give the same "may" discretionary power to council. Section 187, new subsection (1.1): "City council may designate another member of council to preside at meetings of the city..." Something you have to do in your procedure bylaw you can do in a stand-alone bylaw.

The Chair: Any further questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Tabuns, I believe your motion is a duplicate.

Mr. Tabuns: That's correct, Madam Chair, and thus is withdrawn.

The Chair: Shall section 184, as amended, carry? All those in favour? All those opposed? That's carried.

Sections 185 and 186 have no changes. All those in favour of those sections? All those opposed? They're—

Interjection.

The Chair: Mr. Hardeman, do you want to discuss 185 and 186?

Mr. Hardeman: Section 186.

The Chair: Can I move 185? All those in favour of 185? All those opposed? That's carried.

Section 186.

Mr. Hardeman: It's 187 I want.

The Chair: I figured it was.

Section 186: All those in favour of this section? All those opposed? That's carried.

The next one is a government motion.

Mr. Lou Rinaldi (Northumberland): I move that subsection 187(1) of the City of Toronto Act, 2006, as set out in schedule A to this bill, be struck out and the following substituted:

"Presiding officer

"(1) The head of council or other presiding officer designated under this section shall preside at all meetings of city council, except where otherwise provided.

"Same

"(1.1) With the consent of the head of council, city council may designate another member of council to preside at meetings of the city, and the designation may be made be secret ballot."

The Chair: Any discussion?

Mr. Tabuns: I propose a similar motion, but in this motion that I would put forward, if this one were to fail, I suggest that council may designate a speaker or a person who will preside over the meeting without having to have the permission of the head of council. I think that the amendment put forward by the government reflects a strong mayor approach to the City of Toronto Act and diminishes the power of the council. So I urge members of this committee to reject the government motion and then adopt my motion when we get to that point.

Mr. Hardeman: I guess my question really is to the parliamentary assistant: Is this not just a replacement for 185?

Mr. Duguid: It's definitely related. I think the concern the city had with 185 was it could be interpreted to mean that every time the mayor leaves the chair and designates somebody else to chair a meeting, they may have to go through a procedural bylaw change which, if I recall, probably requires a two-thirds vote every time he does it. That may or may not have been the case. It may have been just an interpretation. What this does is clarify what's intended here.

Yes, Mr. Tabuns is correct. We don't want to open the door to hostile takeovers of the mayor's seat, and that's why it's important that the mayor have consent with designating another member of council to preside over a council meeting.

The idea of the secret ballot was a request of the city, and it kind of makes sense. We do a similar approach here. It's to ensure that when you're electing a chair, you don't feel that, down the road, if you don't support that chair, maybe they're going to remember that you didn't support them and treat you a little differently. You would hope that wouldn't happen, but it's just human nature. It provides the ability to vote freely on a secret ballot and know that there'll be no repercussions down the road.

Mr. Hardeman: The question is, after the appointment, is it the assumption that the appointee would be able to conduct a meeting in the presence of the mayor, or is this just in the absence of the mayor?

Mr. Duguid: The assumption would include the presence of the mayor. Often the mayor will remove himself from the mayor's chair anyway. Quite often, if he wants to participate in debate—and not all councils are the same—the mayor will remove himself from the chair and allow somebody else to chair while he's participating in debate. In this case, the door is still open to appointing a full-time speaker or chair of council meetings, and the mayor may not ever chair a council meeting or may infrequently chair a council meeting if the mayor chooses and if council chooses to go in that kind of a direction.

The Chair: Any further questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

I believe that makes your motion—

Mr. Tabuns: Redundant.

The Chair: —redundant, Mr. Tabuns. Thank you.

Shall section 187, as amended, carry?

Mr. Hardeman: A recorded vote on that one.

The Chair: A recorded vote has been requested.

Ayes

Brownell, Duguid, Lalonde, Rinaldi.

Nays

Hardeman, Tabuns.

The Chair: It's carried.

Section 188: government motion.

Mr. Brownell: I move that section 188 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by striking out “or other member of council designated to preside at meetings in the city's procedure bylaw” and substituting “or other member of council designated under section 187 to preside at meetings”.

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The Chair: Any comments or questions?

Mr. Hardeman: I need an explanation on this. What are we changing?

Mr. Duguid: My understanding is that this is just to make it consistent with what we changed in the previous amendment; it's consequential to amendment 69. It's a change that was necessary as a result of that.

The Chair: Any comments or questions? All those in favour? All those opposed? That's carried.

Shall section 188, as amended, carry? All those in favour? All those opposed? That's carried.

Government motion for section 189: Mr. Lalonde.

Mr. Lalonde: I move that subsection 189(2) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding at the beginning “Except as provided by section 187”.

The Chair: Mr. Duguid.

Mr. Duguid: A short explanation: The same as the first one, this is just consequential to government motion 69 regarding the selection of the speaker by secret ballot. It's just making this section consistent with what we've done there.

Mr. Hardeman: I didn't get the opportunity or I didn't get up my hand up quickly enough for the previous one, where it said “by secret ballot.” I personally am opposed to any votes being held in council on a secret ballot. In the Legislature, we all stand up to be counted, whether we agree or disagree or want the public to know. I think it's important that all decisions made are made in public for the public. I object to that being put in, because that would nullify the other one again. I think it all should be done in an open vote.

Mr. Duguid: I'm just a little surprised to hear that, given that the tradition of the Legislature is to choose our own Speaker, if I recall, by secret ballot. I suppose the member's entitled to his view. Maybe he doesn't agree with that either and thinks that should be changed too, which is fine. But if we've got one set of rules for ourselves, surely we shouldn't be thinking that other levels of government should have other sets of rules.

Mr. Hardeman: I think we missed the point. This is not the speaker of the council; this is the head of council for the time being. All mayors in the province of Ontario are elected by vote, and the mayor of Toronto will be elected the same way. This is someone to take the place of that.

I've spent many years in local government, and the one position that is elected that way in two-tier systems is the warden. I know that everybody in my community stands up and is counted for who they vote for as warden of the county.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 189, as amended, carry? All those in favour? All those opposed? That's carried.

There are no changes in sections 190 through 195. All in favour of those sections? All those opposed? That's carried.

Mr. Tabuns, you have an amendment.

Mr. Tabuns: I move that subsection 196(3) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by striking out “subject to the approval of the city auditor” and substituting “subject to the approval of the city auditor or another officer designated by city council”.

Very simply, as currently written, the legislation requires the auditor to approve all record retention schedules. In the opinion of the city, that's fairly cumbersome and fairly costly, so this would allow the city auditor or another officer designated by council to approve those record retention schedules.

The Chair: Mr. Hardeman.

Mr. Hardeman: To the mover of the motion, I'm just wondering, does that mean that if the city auditor says there must be a certain length of retention, the city could appoint another officer to change that decision?

Mr. Tabuns: That's a good question. Perhaps legal staff could assist me. As I understand it, whichever officer is given the authority to set those schedules sets those schedules.

The Chair: You're asking for clarification?

Mr. Tabuns: Yes.

Ms. Hopkins: I'd agree with what Mr. Tabuns has just said.

Mr. Tabuns: As I understand it, the person who is given the authority sets the schedule. I don't see where you would simply change the schedule by appointing another authority. The schedule would be set by that person who had been given the authority.

I have to say, in addition, should city council decide to dismiss its auditor or hobble its auditor in the manner you're suggesting, I think that could become quite a public political issue.

The Chair: Mr. Hardeman.

Mr. Hardeman: I guess my question relates to all local municipal government. In fact, it's all decided by the auditor. Though this new act will have a slightly different function for the auditor and their appointment, under the new act, the retention of records is not that big an issue. I mean, I can't see that there's a great variation in the length of retention of records as you go around the province to different municipalities. I'm not sure I see the justification of saying that someone other than the auditor should be able to approve the retention of records. This isn't something that comes before the auditor every day, that they say, "We have these records. We'd like to know whether we can destroy them or not." It's a schedule prepared for the whole city by the auditor and approved by the auditor, and then they function under that, unless there's a request and all agree to change that. So I see no reason why you would want to expand the authority of who makes those final decisions.

Mr. Tabuns: The city simply argues that this allows them essentially to spread a fairly burdensome responsibility, and on that basis makes the request for the change.

The Chair: Any further comments or questions? Seeing none, all those in favour of the amendment? Those opposed? That's lost.

Shall section 196 carry? All those in favour? All those opposed? That's carried.

There are no changes to section 197. Shall section 197 carry? All those in favour? All those opposed? That's carried.

Section 198, government motion: Mr. Rinaldi.

Mr. Rinaldi: I move that paragraph 1 of subsection 198(1) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out and the following substituted:

"1. Except in accordance with section 30 of the Municipal Elections Act, 1996,

"i. a city employee, or

"ii. a person who is not a city employee but who holds any administrative position of the city or who is the clerk, treasurer, integrity commissioner, auditor general or

ombudsman of the city or the registrar appointed under section 165.2."

The Chair: Any comments or questions?

Mr. Hardeman: Does the present act not say exactly the same thing, or is there a change?

Mr. Duguid: The purpose is to ensure that their lobbyist registry is added to the list of officials ineligible to hold office as a member of council.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall 198, as amended, carry? All those in favour? All those opposed? That's carried.

There are no changes to sections 199 through 206. All those in favour of those sections? All those opposed? That's carried.

Section 207: Mr. Tabuns.

Mr. Tabuns: Madam Chair, there are a number of motions here that are similar in content that give the city of Toronto control over local boards. Unless you would like them all to be voted on individually, I can read each one and we can vote on them as a block, because the intent is the same.

Mr. Duguid: That's fine by us.

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The Chair: Any further comments or questions?

Mr. Tabuns: Would you like me to read them, then?

Mr. Hardeman: Do they all fit in succession in the section?

Mr. Tabuns: They do. Well, from 207 to 214, to 215, to 216, to 217.

The Chair: Mr. Tabuns, I understand you cannot vote on them as a block.

Mr. Tabuns: Ah. Then I'll go through them, Madam Chair.

I move that subsection 207(2) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding at the beginning, "Subject to a bylaw under section 8".

Again, my purpose in moving this is to extend the power of the city to ensure that it controls its local boards.

Mr. Duguid: For this, and I can make the same comments for subsequent similar motions, we don't see a need to do this and we're not sure that there's any other effect. I guess I'd be a little concerned about potential unintended consequences, but regardless, we don't see this as being necessary, so we won't be supporting it.

The Chair: Any further comments or questions?

Mr. Tabuns: Simply that I'm prepared to go ahead with it.

Mr. Hardeman: Is "Subject to a bylaw," an add-on, that they must have bylaws as opposed to just policies?

Mr. Tabuns: It would be subject to the city of Toronto bylaws.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 207 carry? All those in favour? All those opposed? That's carried.

There are no changes to sections 208 through 213. All those in favour of those sections? All those opposed? That's carried.

The next motion is 214: Mr. Tabuns.

Mr. Tabuns: I move that subsection 214(2) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding at the beginning, "Subject to a bylaw under section 8".

The Chair: Any comments or questions? All those in favour of the motion? All those opposed? That's lost.

Shall section 214 carry? All those in favour? All those opposed? That's carried.

Mr. Tabuns, you have the next motion.

Mr. Tabuns: I move that subsection 215(2) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding at the beginning, "Subject to a bylaw under section 8".

The Chair: Any comments or questions? All those in favour of the motion? All those opposed? That's lost.

Shall section 215 carry? All those in favour? All those opposed? That's carried.

Mr. Tabuns: I move that subsection 216(2) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding at the beginning, "Subject to a bylaw under section 8".

The Chair: Comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 216 carry? All those in favour? All those opposed? That's carried.

Mr. Tabuns: I move that subsection 217(3) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding at the beginning, "Subject to a bylaw under section 8".

The Chair: Any comments or questions? Seeing none, all those in favour? All those opposed? That's lost.

Shall section 217 carry? All those in favour? All those opposed? That's carried.

Committee, there are no changes on sections 218 through 221. All those in favour of those sections? All those opposed? That's carried.

On part VII, financial administration, there are no changes from sections 222 through 226. All those in favour of those sections? All those opposed? That's carried.

Mr. Tabuns, section 227 is your motion.

Mr. Tabuns: I will withdraw this, Madam Chair.

The Chair: Thank you very much.

Shall section 227 carry? All those in favour? All those opposed? That's carried.

Government motion: Mr. Brownell.

Mr. Brownell: I move that subsections 228(2) and (3) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out and the following substituted:

"Inspection

"(2) The reports of the city auditor provided to city council under subsection (1) are public records and may

be inspected by any person at the clerk's office during normal office hours."

The Chair: Any comments or questions? Mr. Hardeman.

Mr. Hardeman: Is this just taking the minister's authority away, clarifying the public's authority, and the minister could be a member of the public?

Mr. Duguid: Yes. It's consequential to a motion we passed—I think it was 34—which removes the ability of the minister to ask the auditor to make reports. This is consequential to what we did previously.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Tabuns, you have the next motion.

Mr. Tabuns: My motion here is substantially the same as the one put forward by the government, so I will withdraw it.

The Chair: Thank you.

Shall section 288, as amended, carry? All those in favour? All those opposed? That's carried.

Committee, there are no changes on 229 to 230. All those in favour of those sections? All those opposed? That's carried.

Section 231: I believe there's a recommendation. Mr. Tabuns.

Mr. Tabuns: I simply recommend that the committee vote against section 231 of the City of Toronto Act, 2006, as set out in schedule A to the bill. This is quite a harsh section in the act. It says that the Minister of Finance can retain funds owed to the city of Toronto should the city of Toronto fail to provide the minister with information. I just find that is not a reasonable power to exercise against the city on a question of information.

The Chair: Mr. Hardeman.

Mr. Hardeman: Since it was being recommended to vote against something—I have been unable to vote against anything so far—I was hoping I would be able to listen to him. But it seems to me that this is one of the few safeguards in there that says there is a penalty if you don't follow the rules of the act. I can't support this amendment to vote against the section, so I'll be voting for the section.

The Chair: All those in favour of section 231? All those opposed? That's carried.

Committee, there are no changes on sections 232 through 236. All those in favour of those sections? All those opposed? That's carried.

Section 237: Mr. Tabuns.

Mr. Tabuns: I move that clauses 237(c), (d) and (e) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out.

These requirements are more onerous than those of the Canadian Institute of Chartered Accountants. It gives the minister the ability to make regulations regarding the city's reserve fund. If we're going to treat the city as a mature level of government, putting ourselves in a posi-

tion to set the requirements for the city's reserve fund seems, again, going too far.

The Chair: Any comments or questions?

Mr. Duguid: We won't be supporting this amendment. There is a need, at this point in time, anyway, for province-wide standards regarding the management of reserve funds. I think it's important that the province retain that ability, and it probably should be consistent across the province. There may come a time when the public interest is not best served by ensuring that the province is capable of stepping in to ensure that liabilities can be covered, but I don't think we're at that time right now, so we won't be supporting that motion.

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Mr. Hardeman: It's another one of those cases where I won't be able to vote against this as part of the bill, because I believe it's important, as the parliamentary assistant said, that certain things need province-wide standards. There's presently a law in place that says we must have full cost-recovery for some of the infrastructure that's in the ground, and it would seem inappropriate to me that an area such as the city of Toronto would not be responsible to their citizens to do that, to make sure there is full cost-recovery and that the money is in place to replace that infrastructure if and when the time comes. I think this is not only good for continuity across the province but will also ensure for the people of Toronto that their government is not putting money from infrastructure into other services that they deem appropriate. This isn't a section that says the minister is going to control it; it just says that if they're not doing it, he can, by regulation, make it happen. I support that.

The Chair: Any further comments or discussion? All those in favour of the motion? All those opposed? That's lost.

Shall section 237 carry? All those in favour? All those opposed. That's carried.

Committee, there are no changes to sections 238 through 239. Shall they carry? All those in favour? All those opposed? That's carried.

On part VIII, finances, there are no changes on sections 240 to 243. Any comments or questions? Shall they carry? That's carried.

On section 244, there's a government motion.

Mr. Kevin Daniel Flynn (Oakville): I move that subsection 244(2) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out and the following substituted:

"Exception

"(2) Despite subsection (1), the city may apply an amount in a sinking or retirement fund to pay for any capital expenditure of the city if the balance of the fund; including any estimated revenue, as audited by the city auditor is or will be sufficient to entirely repay the principal of the debt for which the fund was established on the date or dates the principal becomes due."

The Chair: Any comments?

Mr. Duguid: This probably needs some clarification. This gives the city the ability to apply sinking or retire-

ment funds to capital projects. The amendment clarifies that the auditor need not approve every single transaction. It could have been interpreted that that's what the bill had said originally, and that wasn't the intent. These transactions are audited as part of the audit process so they will be transparent and audited and all that stuff, but the auditor doesn't have to approve every single transaction when it comes to applying a sinking or retirement fund to capital projects.

Mr. Hardeman: I totally agree with the sinking fund, but how does the issue of a retirement fund apply to the city? Are there other retirement funds within the city structure that would be beyond the OMERS fund? Hopefully, this doesn't deal with the OMERS fund.

Mr. Duguid: The answer to that question is yes. Believe it or not, as a member of city council there for nine years, I was not aware of that until I asked the very question to staff that the member just asked. There are other funds; they probably predate OMERS. I don't know what amounts or what the funds are, but there are other funds, and that's really what they're talking about here.

Mr. Hardeman: I'd just want to ask the legal branch to make sure that they're not allowed to use OMERS for capital projects as opposed to putting it in OMERS.

Mr. Duguid: I don't know the answer to that question, but maybe staff can respond to that.

Ms. Janet Hope: Janet Hope, municipal finance branch. Just to clarify the use of the term "retirement fund" in this context, it's not a pension fund; it's a retirement fund in the context that this is the financing section.

Mr. Hardeman: Superannuation-type funding?

Ms. Hope: Yes. It's just speaking to any kind of fund that's set up as a retirement fund, along with sinking funds.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Tabuns, you have the next motion.

Mr. Tabuns: Since the substance of the motions is the same, I'll withdraw.

The Chair: Thank you.

Shall section 244, as amended, carry? All those in favour? All those opposed? That's carried.

There are no changes to sections 245 through 252. Shall those sections carry? All those in favour? All those opposed? That's carried.

Part IX, fees and charges, section 253: There are no changes. Shall it carry? All those in favour? All those opposed? That's carried.

On section 254, there's a government motion.

Mr. Lalonde: I move that section 254 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following subsection after subsection 254(1):

"Same

"(1.1) A fee or charge imposed for capital costs related to services or activities may be imposed on persons not receiving an immediate benefit from the services or

activities but who will receive a benefit at some later point in time.”

The Chair: Any comments or questions? Mr. Duguid, did you want to do any preamble to this?

Mr. Duguid: Do you want an explanation? Okay. Currently, only sewage and water capital costs can be raised from a person before the service is actually being provided. What this does is give the city flexibility to include other services, similar to the flexibility under the city’s area rating authority that we’ve provided within this act. It just gives them a little more flexibility to determine capital costs and cover capital costs.

Mr. Hardeman: Could I ask what other type of services you might be referring to?

Mr. Duguid: That’s a good question. I suppose they’d have the ability—this would open it up to capital costs, I would assume, for everything from community centres to other things. I don’t know specifically what the city has in mind in this particular area. I just know it gives them more flexibility in terms of raising revenues for services to be provided in the future.

Mr. Hardeman: There was a lot of concern expressed during the deputations about using the fees and user charges for purposes other than that for which they were intended; that, in fact, it was a new way of raising revenue through taxation without actually calling it taxation. My question would be—since this is pretty broad; it can be charged to “persons not receiving immediate an benefit”—if the city of Toronto decided that they were going to upgrade the Gardiner and put it underground and that all the people of Toronto were going to pay a user fee to do that, could they charge a user fee and put it in the fund for road construction?

Mr. Duguid: I’m not sure about that. What this does is give them the ability to charge a fee for a service that is to be provided in the future. An area fee is something that they’d be able to do. They can do that now for sewage and water in an area. If a particular area, for instance, was converting their meters or something like that, they could charge a fee to residents to do that. This opens it up for other capital expenditures.

I could give examples off the top of my head, but I don’t know specifically where this would be applied other than it provides any capital expenditures that could be used in the future. If an area decides that they want a particular capital facility to be provided, the city would now have the ability to say, “You can pay a little extra.” They will collect a fee for that and allow you to have that service provided or that particular facility built. But they have to collect the fee in advance, which they can’t do right now.

Mr. Hardeman: I guess the question would be—and maybe we’ll need a legal interpretation of it again, if we could—whether this in any way implies that it’s directed to certain people, as opposed to an overall levy on city people, like a poll tax, only we call it a user fee for transportation and then we could put in a poll tax on the people of Toronto without ever asking anyone because this section gives them the power to do that?

The Chair: Can we ask somebody from municipal staff to assist with this answer on this one?

Mr. Gray: You’ve raised a number of points. The first point I’d make is that it can’t be a tax in the sense that you can raise more than your actual costs. This is a fee and charge section, so whatever fees you impose are going to have to reflect your actual costs. If your definition of “tax” is raising general revenue beyond your needs for a particular purpose, it certainly can’t be a tax. The point that was raised, of course, is that this can already be done through the taxation mechanism. It could be done through the general tax levy or, if you don’t want to impose it on the whole city, you could area-rate the cost for any capital improvement ahead of time.

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The city hasn’t told us, because they don’t know themselves, of course. They want the flexibility. When you’re putting in sewer and waterlines, you may want to be rebuilding the road at the same time, and that’s going to happen two or three years from now. So an example would be, you’re digging up the road to put in the sewer and water, and in addition to raising the capital cost for the sewer and waterline, you’re also raising the cost for restoring that road.

The poll tax issue: The fee and charge section says specifically that whatever this part authorizes, it does not authorize anything that’s in the nature of a poll tax. If the city does anything that smells like a poll tax to a court, that’s not going to survive a court challenge. So I’m not quite sure what your reference to a poll tax was in that context.

Mr. Hardeman: I guess the reason may be that part: If it smells like a poll tax, it’s not going to be allowed, only I don’t know what a poll tax smells like. My concern is that if the city decided for future capital infrastructure that they wanted to bury the Gardiner—that’s one that’s been in the news in the past—and decided that was going to be a cost attributable to building infrastructure for the city and that it would benefit all the residents of the city, and they were going to start building the reserve for that by charging a user fee to everyone in the city, is there anything in this section that prohibits that from happening?

Mr. Gray: No. That’s just a large example of rebuilding a road. They can do that either by a general levy or they could do it by area-rating, and now this would allow them to do it by a user fee and charge, which, in terms of a mechanism, is probably more difficult for the city to collect, because if it doesn’t have the status of taxes, they can’t use property tax sales to collect. Ordinarily, from a city perspective, taxation is going to be more attractive because it’s easier to collect.

Mr. Hardeman: If I could go on with this, we’re getting closer to what a poll tax smells like. If this allows the charging of the tax city-wide to bury the Gardiner and everyone is expected to pay it, it’s still considered, in your explanation, a user fee, but even someone without a car is going to be charged that fee strictly on the basis that they live in Toronto?

Mr. Gray: It's going to be up to the city. One of the great joys of this new legislation is, it used to be that the province would vet every authority you'd give to municipalities to make sure it complied with the Human Rights Code, complied with the Constitution, and now we've effectively downloaded all that to the city. The city says, "We're capable of making those judgments, and if you give us a broad power, it is up to us to make sure we don't offend, whether it's constitutional law or the limits that we've retained in the legislation," one of which is that it cannot be a poll tax.

Mr. Hardeman: I guess my concern is that the province did see fit to include the words "poll tax," that that's a prohibited tax.

Mr. Gray: Yes.

Mr. Hardeman: My concern is that with this amendment, we've in fact created it by another name, because we can broadly charge for other than the ones that are presently allowed. Water and sewer—they can do all those now. This is one that's going to be brand new, and it's made so broad that in fact it could cover a major infrastructure program in the city and be charged to every city resident because they are a resident, not because they're going to use the amenity.

Mr. Gray: As I say, it is up to the city to make sure it's not a poll tax. If they can structure it in a way that it's not a poll tax, they'll be able to use this authority; if in fact it is, you're charging people for no other reason than they fact they exist. In my mind, that's the core definition of what a poll tax is: You're not charging them for any reason other than the fact that they exist and we want a body to tax. So they have to make sure, when they design a system of fees and charges, that they're not charging people solely because they're there, for the sole reason that they're there. They have to charge them for some other reason, and they're going to have to be able to justify that there is another reason for imposing this fee on them. In this case, they would have to be able to convince a court that they in fact will benefit from having the Gardiner buried. If the court cannot be convinced that all these people who don't have cars will benefit from the Gardiner being buried, then the charge may very well be struck down.

Mr. Hardeman: I guess my problem is that the government saw fit to include the words "poll tax" and not allow it. In that part of the act, they didn't put in to say, "We know that we've told them not to do it, that they won't do it. We put it in there specifically so they don't do it." Now we're putting in an amendment that says, "They can try it another way, but we're quite sure that if they do, it will go to court, and the court will decide whether it's appropriate or not, whether they can define it as a poll tax or not," or whatever.

To me, and I'm not a lawyer, it would seem that if it's being charged just because you live in Toronto and they have a major project that the city of Toronto believes is appropriate, one could make a case that you're going to benefit from it because you're a taxpayer in Toronto. So it's an infrastructure user fee, even though you may never use that infrastructure.

An argument can be made that there are people living in Toronto who have never used mass transit, but the taxes and the charges for that are not considered a poll tax. It just seems to me that we're creating an avenue here through an amendment that allows a much broader use of user fees than original user fees were intended for, recognizing that this bill also takes out the requirement to match the cost of administering the service with the amount raised. In this bill, if they put the tax in for the Gardiner, it doesn't mean that at the end of the day they have to use it for the Gardiner. So they've just found another way to tax. I think this is opening the door to do that.

Mr. Gray: On that last point, certainly the courts interpreting user fee provisions have said the fees that you impose have to be a reasonable estimate of the cost that you're going to incur for whatever purpose you're raising those fees. This is not authority for the city to raise general revenue. This is authority for them to impose fees that are a reasonable estimate of what the costs will be for whatever capital costs they anticipate incurring a year or two or three into the future.

Mr. Duguid: I appreciate the efforts of the member opposite, but let's just read the section out loud so we can see what we're talking about here:

"A fee or charge imposed for capital costs related to services or activities may be imposed on persons not receiving an immediate benefit from the services or activities but who will receive a benefit at some later point in time."

I think it's clear that a poll tax would not qualify under this kind of scenario. This is something where you're going to get a benefit, probably in a particular community, and there has to be a benefit accruing to a particular group or particular resident. It gives the city a little more flexibility, the same flexibility we've given them on an area rating basis to be able to provide an additional property tax fee if they're going to build something in a particular area and the community wants it done and they move forward on that basis.

This provides them with a fee or a charge that they can impose for a capital cost. It's not an avenue for a poll tax. It's not an avenue for any kind of an overall tax. It has to be for a specific capital cost, and there has to be a benefit that accrues to the particular people who could be charged this fee. So I'm not sure—I understand the questions; at the same time, I think they've been adequately responded to.

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Mr. Hardeman: Maybe the parliamentary assistant can understand it better than I can, but I heard the legal branch saying that there is no restriction as to how broad the community will be that is going to be charged or how far or how close you have to be to the investment in order to be considered a beneficiary and being charged.

You mentioned certain communities that put in certain services, and even though you don't live on the street where the services are going in, it's part of your community, so you could be paying a fee for that service to

go in. This is suggesting that there is no longer—we already have an area rating, they can already charge that user fee within an area. If this amendment was just to say we're going to allow the pre-charging of area ratings so you can build a reserve to do that project, I wouldn't have the concern I do. But this is based on their having to decide what they're going to spend the money on in the future, and then the whole city could be the designated area that's going to pay the user fee. They could build the reserve to do the project, and the end result would be, as a resident of the city living in Scarborough, I benefit from the city having a better transportation network, including the change in the Gardiner. So I would benefit and it would be a legitimate charge. That, to me, sounds a whole lot like just charging a poll tax for capital projects that we don't feel we can get into the capital budget of the city in the present taxation system. I think that's wrong.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Mr. Duguid: Yes. Just to clarify, there are a number of safeguards that we have in place. There are the courts. An interpretation of this legislation—if there's abuse in any way, the courts are there. But the province has the ability, as well, in the area of provincial interests; we've retained the ability to intervene if there's an area of provincial interest in a decision that's made by the city. So I'm not concerned.

I don't think the city has any intentions of abusing this and imposing a poll tax or any other kind of tax, other than they want the flexibility. It's difficult to build capital projects. We're all in favour of building infrastructure and giving the city a little more flexibility in being able to finance the building of infrastructure and trying to update the infrastructure in the city that's very much in need of being updated. We think that's a positive provision for the city that will help the city build and compete with other cities its size around the world. So this is an important provision and something that we continue to support.

The Vice-Chair: Any further debate?

Mr. Hardeman: Just to finish it off, or we're going to be at this one all day, my total concern rests in the last comments the parliamentary assistant made. We all know we need to build more infrastructure. In fact, in most municipalities, we need to build more infrastructure than we have the ability to fund. If it had been in the bill originally, I likely wouldn't have had any concern, but my real concern is that this is an amendment that's being put in, and I see that all the small things that we were referring to are already in the bill through the local improvement and the area rating and all these other good things. This one opens it right up, that it could be a broad infrastructure investment within the city. If the province really believes that they may need to step in, then I don't think they should put it in there. I supported the part of the bill that says the province can, by regulation, protect the interests of the province. I don't think this is an issue of interest to the province; I think this is an issue of

interest to the residents of the city of Toronto, and I don't think they want to be burdened with extra service charges that they don't directly benefit from. This amendment will give the city of Toronto the ability to charge them all for services that they believe the province should be paying for, but the province hasn't put up enough money, so they charge it to the people of Toronto. With that, I can't support this amendment.

The Vice-Chair: Okay. I think we've had a good debate on this. You've heard the motion. All in favour? Opposed?

Mr. Hardeman: Recorded vote.

Ayes

Duguid, Flynn, Lalonde, Rinaldi, Tabuns.

Nays

Hardeman, MacLeod.

The Vice-Chair: The motion is carried.

Next we have government motion 254(4): **Mr. Flynn.**

Mr. Flynn: I move that subsection 254(4) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out.

The Vice-Chair: You've heard the motion. Any debate?

Mr. Hardeman: Can I get an explanation of why we don't like it in there?

Mr. Duguid: Sure. It's consequential to a previous amendment. I don't have written down which previous amendment it was, but it's consequential to an amendment we've already passed.

The Vice-Chair: Any further debate? You've heard the motion. All in favour? Opposed? Carried.

We have 254(4): **Mr. Tabuns.**

Mr. Tabuns: Given that my motion has substantially the same content as the government motion we just passed, I withdraw.

The Vice-Chair: Thank you.

Shall section 254, as amended, carry? All those in favour? Opposed? Carried.

The next motion is 254.1: **Mr. Tabuns.**

Mr. Tabuns: I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 254:

"Fee for pension plan administration

"254.1 Without limiting sections 7 and 8, those sections authorize the city to pass bylaws imposing fees on a defined benefit pension plan to reimburse the city for its costs of administering the plan."

The Vice-Chair: Any debate?

Mr. Duguid: Chair, we won't be supporting this. Administrative costs for pension plans are regulated under the Pension Benefits Act. If we were to contemplate these kinds of changes, that's something we'd have to do under a review of that act. We'll not be looking to support this.

Mr. Hardeman: To the mover of the motion, what pension plan are we talking about?

Mr. Tabuns: I'll be honest, Mr. Hardeman. I don't know which pension plan within the city's portfolio this would cover, but if the city has administrative costs of administering a pension plan, they want to be able to recover them.

Mr. Hardeman: Isn't the city a co-owner of the pension plan to start with? Wouldn't their involvement in it be part of their cost?

Mr. Tabuns: At the city's request, I've put this forward so they can recover their costs. I apologize; I don't have greater detail to give you.

Mr. Hardeman: I'm going to tell the city that you've done a wonderful job of putting it forward, but I can't vote for it.

Mr. Tabuns: I appreciate that. I'll convey that directly to them.

The Vice-Chair: You've heard the motion. All in favour? Opposed? The motion is lost.

There are no amendments to sections 255 through 257. Shall those sections carry? All those in favour? Opposed? Carried.

We're on 258, a government motion: Mr. Rinaldi.

Mr. Rinaldi: I move that section 258 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out and the following substituted:

"Approval of bylaw of local board

"258(1) The city may pass a bylaw providing that a bylaw of a local board (extended definition) of the city which is not a local board (extended definition) of any other municipality imposing fees or charges under this part does not come into force until the city passes a resolution approving the bylaw of the local board.

"Exception

"(2) A bylaw under subsection (1) does not apply with respect to fees or charges that are subject to approval under any federal act or under a regulation made under section 261."

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The Vice-Chair: You've heard the motion. Any debate?

Mr. Duguid: Just by way of explanation, currently the bill would require that any local board fee bylaws automatically go to city council. That may well be what city council wants to happen, but it would require—it could be all kinds of little fees; I don't know for sure, but even little library charges and things like that would have to go to council for approval. City council will set up its mechanism, and this gives them the flexibility to ensure that these fees go to city council, but they may allow some boards to set their own fees and not have to go through city council. It will be up to the council to decide how they want to structure their protocol.

The Vice-Chair: Any further debate?

Mr. Hardeman: To try again, parliamentary assistant, the suggestion is that all bylaws of local boards that include fees must be passed by city council before they become law?

Mr. Duguid: As the bill is written, without this amendment that would be the case.

Mr. Tabuns: I would say that the city of Toronto council would like to have more authority deciding under what circumstances local boards can charge fees, and thus I won't support this motion. In fact, I would move that should this committee reject this motion, we reject the text in the act as currently written.

Mr. Hardeman: I believe there's very little difference between the present bill and this new resolution. The present bill says all bylaws must be approved by the city, and this one says all local boards' bylaws must be approved by the city, in a convoluted way. Tell me again what the difference is.

Mr. Duguid: The difference is that you can either mandate that all fees have to be approved by the city or you can give the city the ability to determine whether it has to go through city council or not go through city council. It gives them a little additional flexibility.

Mr. Hardeman: Maybe I need a legal definition here, then. Is what you're suggesting, parliamentary assistant, that the city may pass a resolution that they approve the bylaw?

Mr. Duguid: In this case, the city would set their policy as to when and where a board would have to have its fees approved by city council. They could say all boards, or they could say that for certain fees or charges the board sets them and the board sets them on an annual basis, that kind of thing.

Mr. Hardeman: So this really says they don't have to approve the local bylaw if they don't want to.

Mr. Duguid: It'll be up to the city to determine one way or another whether the local boards would have to report to council—well, I shouldn't say report to council—would have to have council approval before they can raise any of their fees.

The Vice-Chair: Any further debate? You've heard the motion. All in favour? Opposed? Carried.

Next we have 258: Mr. Tabuns.

Mr. Tabuns: Given the previous vote, Mr. Chair, my motion is redundant, so I will withdraw.

The Vice-Chair: Okay, that has been withdrawn.

Shall section 258, as amended, carry? All those in favour? Opposed? Carried.

Seeing no amendments to 259 and 260, shall sections 259 and 260 carry? All those in favour? Opposed? Carried.

Next is 261.

Mr. Tabuns: I move that section 261 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following clause after clause 261(i):

"(i.1) providing that, despite the Assessment Act, city council may appoint a court of revision for the city;"

It's simply saying that the city of Toronto needs to take more authority for dealing with assessment issues and property tax issues within its jurisdiction and, within this act, giving them the power to start to do that.

The Vice-Chair: Any further debate?

Mr. Hardeman: To the mover of the motion, what's the intent of this court of revision?

Mr. Tabuns: It's a court of revision for assessments for properties within the city of Toronto, assessment of property tax values.

Mr. Hardeman: Being from the country, a court of revision as to who pays what portion of the grain—we're talking here about being able to reassess assessment?

Mr. Tabuns: Yes, to change assessments, to have a revision of assessments.

The Vice-Chair: Any further debate?

Mr. Hardeman: Again, I can't support this resolution. The province has worked long and hard, not totally successfully in all instances, to have a unified and fair assessment in the province of Ontario, across the whole province. I'll be the first to admit that we have some problems in assessment right now, but if one goes back a number of years, the reason we started on the present approach was that the city of Toronto was out of sync with fair market assessment, fair value assessment. It was so far out that some of them were at 1940 levels. In fact, that was where the big challenge was in trying to bring fair and equitable assessment across the province. If, through this act, we decide that the process of achieving that fair and equitable assessment across the province is in jeopardy because one municipality—granted, a large one—makes decisions differently than everyone else, that's going to be very detrimental to a fair system across the province.

I would also point out that in changing this, if we have a different system in the city of Toronto for setting the values, then the portion of the assessment used by the province to charge education taxes would no longer be fairly assessed across the province. One can make a case that that's not happening now either, but at the same time, we have to have a balance in assessment, a fair assessment, to get a fair system in place of who pays what taxes. If we change it on the assessment side rather than on the taxation side, I think we will end up with a bigger problem than we presently have.

Mr. Tabuns: I'd argue that in fact the city of Toronto should be in a position where it can exercise a fair amount of discretion, a fair amount of power over its property tax system. I would also say that I don't think property taxes from one city should be used to support the operations of other cities. The way the province currently operates—that is, putting costs for education onto municipalities; the download, if you will—is problematic for the city of Toronto and in fact for many municipalities in this province. I think this is the first step to changing that.

Mr. Hardeman: I don't disagree that some changes need to be made to make sure that everybody's paying their fair share in the province. At the same time, I don't believe this will do that. Changing assessed values in the city of Toronto will have a very small impact in relation to other municipalities. The big impact, and the reason I am opposed to this motion, is that the city of Toronto will be able to move more taxes to the industrial-commercial

side and less to the residential side within their own boundaries. I don't believe that's a decision that city council should be allowed to make or should be in the position to make or be asked to make, because that part of it is what hasn't worked well in years gone by, and I don't think it would work well now.

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The Vice-Chair: Any further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

Shall section 261 carry? All those in favour? Opposed? It's carried.

Next we have part X: Power to impose taxes, section 262. It's a PC motion.

Ms. Lisa MacLeod (Nepean–Carleton): I move that subparagraphs 5 ii and iii of subsection 262(2) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out.

The Vice-Chair: Any debate on this motion? Mr. Hardeman.

Mr. Hardeman: When we had the public delegations on the bill, the business and commercial presenters, particularly the hospitality industry, made great presentations on what the negative impact would be if these taxes were allowed to be charged. They were so thorough in their presentation that the mayor of Toronto made some comments, which I'll paraphrase, that "We wouldn't do anything that would put that much negative impact on any one of our citizens or any one of our businesses." I'm not sure it was these taxes exactly, but "We wouldn't impose taxes that would do that. But we want to be treated like a mature level of government. We want the right to be able to do it, and we can make decisions about whether the impacts will be negative." I don't anyone who came forward suggested that there would no impact from these taxes.

The other thing was that we didn't have anyone come forward, including members from the government side—and hopefully in this debate we can get some information on that—who could come up with a way of implementing these taxes. I would just quote from the bill, for the record:

"i. for the purchase of admission to a place of amusement as defined in the Retail Sales Tax Act,

"ii. for the purchase of liquor as defined in section 1 of the Liquor Licence Act for use or consumption,

"iii. for the production by the person of beer or wine, as defined in section 1 of the Liquor Licence Act, at a brew on premise facility, as defined in section 1 of that act, for use or consumption, or

"iv. for the purchase of tobacco as defined in section 1 of the Tobacco Tax Act for use or consumption."

That sounds fairly good, and governments, since time began—we have traditionally called them "sin taxes"—have decided that whenever we need more money, the best place to put it is on alcohol, cigarettes and places of entertainment, considering that those are the three elements that are not necessities of life. We usually consider that spending on those items is discretionary, and that makes it a good place for government to increase taxes.

Having said that, if you allow that process only in one municipality, the implementation becomes almost impossible. The act does deal with the fact that the city can ask the province to collect on their behalf, so for liquor and restaurants, I suppose we could ask the province, along with their tax, to put a municipal liquor tax on the drinks served in all drinking establishments in the city of Toronto. I don't think it would work well, but it may work downtown. But I would have a little trouble trying to figure out how that would work on the boundary between Peel region and the city of Toronto or York region and the city of Toronto. If you go to Steeles Avenue, have a drinking establishment on one side of the road that doesn't have the extra tax, and you go to the other side of the road and they do have the extra tax, I don't think the one on the south side of Steeles Avenue is going to be in business very long with an extra tax that no one else has to pay.

I think it's possible. I don't think it's the right thing to do and I don't think it's practical to do it, but I think it's possible.

The next one, of course, is on cigarettes. Nothing is being charged as highly as cigarettes are today in our market. I'm not going to defend or support lowering the tax at this point, but I think it's important to recognize that the cigarette tax is put on prior to sale at the counter. I don't know how we're going to keep track of which cigarettes are purchased in the region outside Toronto and which ones are purchased in Toronto.

The only one of these taxes where it is clearly defined as to where it will be is entertainment. Obviously, if people come into the city and go to the SkyDome—the Rogers Centre, my apologies—to go to a ball game, yes, the operators could charge a tax for the city of Toronto and pass it on to Toronto. At the same time, I suppose they could charge that in their property taxes, or maybe they could put it in that broad, poll tax type taxation system we've created previously in the bill, where they can charge a user fee for any purpose.

If the intent here really is to allow the city to raise money on those three items, first of all, on alcohol, rather than have the city get the power to charge the tax and have the province do it for them, and then send it back to the city, why is it not done as the province has done with the gasoline tax?

I would point out that we hear quite often from the government side about how we have given two cents a litre—is it still two cents? I think it is—of the gas tax back to municipalities to help with their infrastructure, but there's absolutely no relationship between the litres of gas sold in the city of Toronto and the amount of money the city of Toronto gets at two cents a litre for their mass transit. In fact, the cities that tend to have the largest amount of mass transit, where the two cents a litre are going, tend to be the ones that have the fewest stations where they sell gasoline.

What it really is: The province says, "This is how many litres of gasoline that were sold in the province. Two cents a litre generates this much money, and this is

how we allocate that money throughout the province to help municipalities with their costs." They didn't see the need to include an extra tax, or another tax, a totally different line item on the bill to get those two cents. If they decided that the present taxation system didn't have room for that amount, I suppose they could have considered just increasing that price and people would pay more, and then they could send that money back.

To me, it doesn't require the transfer of the power to tax those three items to the municipality, where in my opinion it won't work, in order to make the city happy so that they're mature and have the right to tax when the mayor says, "We have no intention of doing that, because that would be negative to our people."

This sounds wonderful. We came out with the City of Toronto Act and we were going to have greater taxing abilities, but the taxing abilities, if these are the only three in it, amount to very little and I think it is going to mess up the system. It will deteriorate and have a negative impact on all industry or commercial enterprises in Toronto that have to abide by these rules.

We heard from the hotel and motel association how their industry just could not afford another line item on their bills for another tax. I think this creates that. If the province believes the city of Toronto should have those revenues, they should take it out of that section of the bill that presently is provincial tax and divide that up to help the city of Toronto.

1140

One of the presenters actually made that case. They actually came in and said, "There's nothing wrong with an extra tax, provided the province lowers its portion." I think that makes a good case that you don't really need a separate tax; what you need is a better division of the resources between the province and the municipalities.

So I see absolutely no benefit to this section. The mayor has said he's not going to use it. We're going to take him at his word. If it's left in, I suppose it's irrelevant, but the industries all believe that it's going to be implemented and that it's going to be a great detriment to their industries.

Rather than wait for the minister to have to put in a regulation to turn the clock back, I think this would be a great time for this committee to look ahead a little bit and see that since there's no positive to this being in there, why don't we vote against it and eliminate it? I think everyone would benefit from having it eliminated and letting the province and the city of Toronto discuss a fair and equitable distribution of funding from those products without having another level of government put another taxation system in place for this to happen.

I would recommend that everyone on the committee vote against this and strike this section out.

Mr. Duguid: I appreciate the motion brought forward by my colleague. However, I think this is really where the rubber hits the road on this particular bill. It's where you either have the courage to move boldly ahead and show confidence in the people of Toronto, that they're mature enough, responsible enough and capable enough

to manage their own affairs, or you take the old approach, and it was the old Tory approach, of condescension, of not trusting the city of Toronto, of being suspicious of them, that it would probably be harmful to them in the policies you bring forward.

We have courage on this side of the House. Our Premier has courage to move forward with what is very bold legislation. In the face of hypothetical scenarios about groups that have come before us to lobby that their particular group may down the road, at some point, be impacted by something the city may do, we will not—if we were to succumb to this particular request at this time, it would just be the thin edge of the wedge, and bit by bit we would watch this act unravel to the point where there would be no alternative sources of revenue provided to the city.

The mayor of the city made it clear when he was here and made his deputation that a tax on alcohol is not something the city has any interest in, certainly at this point in time. The idea of how they would even go about doing it and administering this tax is something that would be very challenging, to say the least. It's hypothetical at best.

It would be easy for us to take the easy way out and say, "We heard from some people who deputed before us, an industry that we greatly respect and that we've provided great assistance to over the last year in terms of budget measures that have provided them with some tax breaks," but if we were to succumb to that lobby now, we would also have to succumb to subsequent motions that we see coming forward on the same hypothetical basis. It would unravel what we're trying to accomplish here, and I think that would be unfortunate.

I've got a quote from the Leader of the Opposition that I'd like to read into the record because it's totally counter to the approach the Conservative Party is taking on this issue. This is John Tory when he was a candidate for the leadership of his party:

"We have to re-examine completely the relationship between the municipal and provincial government to give the city governments more latitude to raise some of their own revenue, if they choose to do so. They will be accountable for whatever they choose to do to fund some things that are a priority to those cities.... Right now they have to go and ask for permission to do everything and I don't think that's right."

I think he had it right when he was running for the leadership. Somewhere along the way he has lost his path when it comes to this legislation, and this particular motion is probably the one part of this debate that is where the line needs to be drawn.

We have the courage and trust in the people of Toronto to know they will be accountable for their decisions. We wish the party opposite had the same confidence in the people of Toronto, but unfortunately through this motion, and subsequent motions that will come forward, it's obvious they don't.

Ms. MacLeod: I'd like to remark on courage. I think it's pretty courageous to stand up for all Ontarians when

we start to see bad taxing policy, when we're looking at putting forward initiatives that are bad for business. If the mayor of Toronto has said he's not going to use it, and the parliamentary assistant has acknowledged that the mayor of Toronto will not be using this taxing authority, it's not the easy way out, it's the rational way out: We have to remove this from the bill. This is a regressive tax. It has negative impacts on businesses in Toronto and we feel on this side that it's dangerous precedent-setting for other jurisdictions across this province.

In my own community of Nepean–Carleton and in the city of Ottawa, we have heard businesses that are opposed to this being enacted in legislation. I'd like you to consider the comments from my colleague from Oxford, our critic for municipal affairs who has spoken against this, but also to listen to the mayor. He says he does not want to put this into play. I think we ought to respect that, and we ought to strike this out.

The Chair: Any further comments or questions?

Mr. Hardeman: I take some exception to some of the comments from the parliamentary assistant. We've gone through this debate before on some of the other parts of the bill. This isn't an issue about who said what years ago and how we got here. What it's about is providing the best possible legislation for the new city of Toronto. In my opinion, this part doesn't do that.

The parliamentary assistant says, "But we have courage and we have trust in the people of Toronto, so we will do what the members of Toronto city council want, not what the people of Toronto want." You see, we have courage in the people of Toronto, and they came in and told us what negative impact this is going to have on their businesses and on the general economy of Toronto. The city fathers, the politicians, the people who run the city have said, "We wouldn't use this if we think it's going to be negative for our economy." The people they're talking about come in and say, "This will be devastating to our industry."

Then, to me, to make sure the people of Toronto get what they have a right to expect from their politicians, we don't put policies in place that, if enacted, will be negative to their economy and to their livelihood. It's our job to be put forward legislation that will benefit the people of Toronto, not the governance of Toronto.

As to the faith the government is suggesting they have in the city of Toronto, I find it rather interesting that when we go back to a previous part of the bill where it talks about the makeup of city council, the province has put forward a position on what they believe a new city council should look like, and then they put in protection to make sure that if the city doesn't come up with that, we can, by regulation—we had a considerable debate on that. If one checks the Hansard on that, I'm sure you would notice that I had great concerns about how the regulation was so explicit that they could not only suggest the type of governance the city of Toronto should have, but the Minister of Municipal Affairs can actually name the type of committees he believes the city should have, appoint the members of the committee he or she

thinks should be on the committee, appoint the chair of the committee who he believes is the right chair of the committee, and set down the operational instructions as to how that committee should operate. That's how explicit it is and how much faith the minister has in the city of Toronto and its governance model.

Now they turn around and say, "I know, folks, you don't really like us being that explicit about how we think you should be governed, so in return, we can't take that away because we want to protect what we think is the provincial interest, in order to make you feel a little better, we will give you these three taxing authorities: the cigarettes, the alcohol and recreation venues. The city says, "Well, that's good, because what we need is greater taxing authority." Nowhere in this bill does it say that before you get this taxing authority, you have to set up what in our mind is a different governance structure to make it more cost-effective. You need to do a review of the city—its administration, its function and how it works—to see how you can make it more effective and efficient.

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We all know, and I'm sure the government does too, that the estimates from those three items in this section, which is the section on taxing authority, is between, I think, \$30 million and \$60 million. In the last budget, the city got \$300 million from the province to help make ends meet. They said, "This is just for now, because by next year you'll have the new City of Toronto Act and you'll have a way of dealing with your own finances. You no longer will have to come to the province for assistance." This doesn't do it, and yet there are other things that need to be done, which is to look at the efficiency and the effective operation of the city. But the province has not put anything in here to deal with that, to say you're going to provide the services in the most cost-effective manner. They just said, "Here's your taxing authority. Now, go to it."

Again, the people who are going to pay those taxes, the people of the city of Toronto, are not being asked, or at least are not being listened to, because there wasn't one presenter, other than the political side, who thought it was a good idea to increase taxes in the city of Toronto. I didn't hear anybody come in and say, "You know, the one answer, the real solution for the city of Toronto is, if we could just increase taxes, then we would have a better city." That isn't what they said.

In fact, I think it was the CFIB came in and had a very thorough chart and presentation on the impact of and the decline of the city of Toronto, mostly related to the tax burden in the city. It is more costly to be operating in the city of Toronto and it's more costly to be living in the city of Toronto, and we're doing nothing about that except allowing that to be increased as opposed to decreased. I really find it strange that we would put this in there and just say that the answer to our problems in the city of Toronto is to increase taxation. That's not what we heard, that's not what the city of Toronto has been saying all along. As politicians, they're not ob-

jecting to putting this in. I'm going to take the mayor's word for it that they're not going to implement it. But what they said was that they needed more realignment of services, they needed more authority over what they were providing, and of course they needed more money to do that.

My colleague also mentioned how this is going to affect the rest of the province of Ontario. Even before the introduction of Bill 53—it may have been just after—I was starting to get a great deal of correspondence from people in my riding, businesses in my riding who were 100% opposed to the City of Toronto Act. At that point, I hadn't even read the City of Toronto Act, so I'm not sure if it had been introduced or not. But they were all very concerned about just solving the municipal financial problems by increasing taxation on small business. It just doesn't make sense. The people in Oxford county were very concerned about that; the people in Nepean—Carleton are very concerned about that. The people in all of the province are very concerned that once this is here, why would taxation not be fair in Ottawa if it's fair in Toronto. Why would that not be a universal plan? I think it's the wrong plan. I don't think taxing consumption is a great way to deal with the shortfall in the money that municipalities have, as opposed to realigning or looking at the services they're providing and whether the property tax base that they have can afford to pay for the services they're being asked to provide. I think that makes far more sense than putting these taxes in place that will in fact ruin a lot of our businesses in Toronto and, by extension, when we do the new Municipal Act, ruin a lot of small businesses in the province of Ontario. I strongly recommend that the whole committee votes against that section.

The Chair: Further comments or questions? Seeing none, all those in favour of the motion? All those—

Mr. Hardeman: Recorded vote.

Ayes

Hardeman, MacLeod.

Nays

Brownell, Duguid, Flynn, Lalonde, Rinaldi, Tabuns.

The Chair: That's lost.

Mr. Tabuns, you have the next motion.

Mr. Tabuns: I move that paragraphs 8, 11 and 13 of subsection 262(2) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out.

Very simply, the act as written restricts the ability of the city of Toronto to use taxation powers to help finance energy efficiency, help finance environmental improvement. I would say that given the position of the government—the words of the parliamentary assistant most recently in discussing Mr. Hardeman's motion about the government taking a strong stand and giving the city of Toronto the power to deal with its problems as it sees

fit—all of us are well aware of the environmental crunch that we have in the city of Toronto, problems with supply of power and thus the need to invest in conservation and energy efficiency.

We know that we have severe air quality problems in this city, thus the need to invest in the reduction of combustion of fossil fuels. It makes sense for us to take these particular restrictions out of the act so the city of Toronto can make its own decisions about how it's going to invest in energy efficiency and conservation and have a source of revenue to do the same. I think that striking out these sections will be tremendously advantageous to the city.

I should note that Toronto Hydro is one of the local distribution companies, local utilities in Ontario, that's been most aggressive in investing in energy efficiency. There's tremendous political will in the city of Toronto to do that. I think we should give them assistance in carrying forward those sorts of approaches.

The Chair: Further comments or questions? Mr. Hardeman.

Mr. Hardeman: To the mover of the motion, I'm wondering, as you referred to Toronto Hydro and the taxation, is it not possible under this act for Toronto Hydro to carry on and charge for those energy-efficient things without the city being allowed to charge extra taxes that they could use for other purposes?

Mr. Tabuns: As I understand it, they currently have to go through the Ontario Energy Board, and there's a fairly restrictive approach on the part of the OEB. I think the city of Toronto wants to give itself more authority in these matters.

The Chair: Any further comments or questions? All those in favour of the motion—

Mr. Hardeman: Recorded vote.

Ayes

Tabuns.

Nays

Brownell, Duguid, Flynn, Hardeman, Lalonde, MacLeod, Rinaldi.

The Chair: That's lost.

Next motion, Ms. MacLeod.

Ms. MacLeod: Schedule A to the bill: subsection 262(2) paragraph 9.2 of the City of Toronto Act, 2006.

I move that subsection 262(2) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following paragraph after paragraph 9:

"9.2 A tax imposed on a person in respect of the issuance of a demolition permit under this act, the Building Code Act"—am I on the right one?

The Chair: No.

Mr. Hardeman: No; the one before that.

Ms. MacLeod: I got ahead of myself. Sorry. I apologize. I'm so, so excited.

1200

I move that subsection 262(2) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following paragraph after paragraph 9:

"9.1 A tax imposed on a person in respect of the registration of a conveyance of land as described in subsection 2(1) of the Land Transfer Tax Act."

The Chair: Thank you. Any comments or questions?

Mr. Hardeman: It somewhat relates—it totally relates to the presentations we received from all the people in realty activity in the city of Toronto and their opposition to what appears to be the ability of the new city of Toronto under the new act to charge a land transfer tax.

There's nothing in the act that says that; it's just the concern that because it isn't mentioned as a prohibited tax, it may in fact be one they could just put on top of the present land transfer tax. A concern with that is that not only is it going to increase the cost of all property, including housing in Toronto, which is already at a record high in the province of Ontario, but it would also have the city charging a fee or a tax on something—an activity—that they have very little, if any, involvement with at all, which is the transfer of property from one owner to another through the Ontario land registry system.

I don't believe there should be an ability for someone to just move in and charge that tax, and I was convinced, when the hearings started, that that wasn't a possibility anyway. But as we heard the presenters, one after the other, saying that their real concern was that that was the intent, and that of course this would be a way to start making up that gap between the \$30 million or \$40 million or \$50 million that would be available through the other taxation the government is putting in place and the \$200-million and \$300-million shortfall that the city finds with their budget—they could get that.

The land transfer tax is also one of these taxes that are not a tax by choice. You can't move the property out of the city of Toronto before you transfer it so that you wouldn't have to pay it in other parts of the province. The people there—as you buy and sell property, you have to do it within the jurisdiction where the property is situated. So it would be a quick and easy way to do it.

From a functional point of view, I suppose it would also be one of the easier ones for the city to administer, because all the property is within the city and it's not a matter of choice whether people go somewhere else, except that over time you will see a decline in the economy of Toronto because people are not coming to Toronto; they're not buying and selling here because it's another place where the cost of doing business is higher than it is anywhere else, and we'll see a great boom in Brampton, Madam Chair, because things will be much cheaper there because the cost in Toronto keeps going up. Again, it wasn't new. For all the presenters from Toronto who were making presentations, that was one of the real challenges in Toronto: Everything is more expensive. This would be another way for that to happen.

The reason we put forward this motion to have it specified that it is a situation that cannot be taxed is because there didn't seem to be real support for it being a taxable item. The mayor suggested he had no suggestion that he was going to do that. The government side, at least from what I heard, seemed to consider that it had not given any thought that there would be a tax on this. In fact, it was suggested that if they decided to do that, this might be one of those places where the minister could use his regulatory powers to prevent it from happening.

Again, if that's where we are, then that's where we should stay. If we think we should regulate it so that they can't do it, then before they make the decision, we just include it in the list of those we weren't prepared to regulate, up to 13 of them. Why don't we make it one of those that say it should be regulated? I don't think anyone came forward, including the mayor, who suggested that this tax should be a city tax. Just to clarify it, we put forward that we should make it one of the exempted taxes that they can't charge.

The Chair: Any further comments? Seeing none, all those in favour of the motion? All those opposed?

Mr. Hardeman: Recorded, please.

Ayes

Hardeman.

Nays

Brownell, Duguid, Flynn, Lalonde, Rinaldi, Tabuns.

The Chair: That's lost.

Mr. Hardeman, you still have the floor. Number 97.

Mr. Hardeman: I move that subsection 262(2) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following paragraph after paragraph 9:

"9.2 A tax imposed on a person in respect of the issuance of a demolition permit under this act, the Building Code Act, 1992 or any other act."

The Chair: Any comments or questions?

Mr. Hardeman: It's similar to the other ones. There were presentations made that we shouldn't include taxing powers that would inhibit the development of the city of Toronto. It would make the cost of building more expensive and the cost of doing business in Toronto above that which would be charged in the area surrounding Toronto, because people would tend to go to the other areas.

The demolition permit is a rather interesting place. Again, you have to buy a permit to demolish it in order to be able to build a new facility there. I believe that the permitting fee should include the total cost of building a new building, and that should be into the new one, not a special permit and a special tax on the permit to demolish the building, to allow the city to rejuvenate and to include new buildings. So I think it's a poor place to put an extra tax. Yet, if the city decided to put it there, there is no ability for a citizen not to pay for it. They have a building

that needs to be torn down, they want to sell it as a vacant lot, and now they have to pay an extra tax in order to create the sale so someone else can buy a building permit, which is where the city wants to go, to have a building put up there, not to try to make increased revenue from the demolition of the building that's there. So I think it's pretty straightforward. I just think that's not the right place to put that tax. They already have the ability to put taxes and fees on building, and I think they should leave it on building, not on the demolition of a building.

But just as an afterthought, when we look at brown-field situations, it would be more difficult if you put a tax on demolition. It would make it more difficult to clean up brownfields, because no one would be willing to pay the extra tax for the permits to remove what is there in order to provide a clean site for future development.

This is one that I would hope everyone, including the government side, would support because I think there should be no tax on this type of activity.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion?

Mr. Hardeman: Recorded vote.

Ayes

Hardeman, MacLeod.

Nays

Brownell, Duguid, Flynn, Lalonde, Tabuns.

The Chair: That's lost.

Shall section 262 carry? All those in favour? All those opposed? That's carried.

Committee, there are no amendments to sections 263 through 267. Shall they carry? All those in favour? All those opposed? Carried.

Mr. Tabuns, you have motion 98.

1210

Mr. Tabuns: I move that part XI of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out and the following substituted:

"Part XI

"Traditional Municipal Taxes

"Tax rates and property classes

"268(1) The city may, by bylaw, determine the rates of taxes to be levied for municipal purposes upon real property in the city that is assessed under the Assessment Act as rateable property for municipal purposes, and the bylaw may establish property classes of rateable property that differ from the classes established under the Assessment Act.

"Enforcement

"(2) The bylaw may provide for the collection of the taxes and for enforcement measures."

I'm moving this motion to give the city of Toronto power to run its own property tax system. A level of government in this country that has control of its tax

system is a level of government that actually is in charge of its operations. We would not expect the federal government to impose on us the method by which we set taxes. I believe we should be extending this authority to the city of Toronto. It needs the power to determine how it's going to tax the citizens, the businesses and the institutions within its borders, and this amendment would give it that power.

I believe there will be a need to move to this system over time, given that the city of Toronto's needs are different from those of some area municipalities within this province. I note that the city of Toronto is the size of a number of provinces in this country. It should have the jurisdiction to determine how it raises the funds necessary for its operation.

The Chair: Further comments or questions?

Ms. MacLeod: I'm going to have to vote against this motion. I think this type of patchwork is dangerous precedent-setting across the province. As a member who represents a fairly large city in this province as well, I just don't think this is a feasible solution.

Mr. Hardeman: I too have concerns with this motion, because it's broader than it appears to be. One has to go back a long way. The city of Toronto, or at least the greater Toronto area, has been the largest in Canada for some time now. But it wasn't that long ago that the disparity between residential and multi-residential in how taxes are applied was structured in the city of Toronto—incidentally, the city of Toronto had the power to set that tax rate. There's no place in this country that I'm aware of where the disparity between the multi-residential tax rate and the single-family tax rate is greater than in the city of Toronto. That increases the cost of living for everyone who lives in rental accommodation in multi-residential units in the city of Toronto.

That wasn't done by the province. That wasn't done by anyone but the people who govern the city of Toronto. Each year when they set their budget—this resolution suggests that they will set their budget, and I believe they should be able to—when they could decide who was going to pay the bill, they always stuck it to the multi-residential and the industrial-commercial, not the single-family residents. That has been a trend over time. I don't believe we should have a bill now that says we want to go back to that day where we can get that great disparity.

I do believe—and I wish it was in a separate motion—that the city should have the ability to set property tax classes so they can deal with some of the intricacies of small business as it relates to large business and so forth. I think that makes sense. But the rate they charge—the difference between the two—I think we need to make sure there's a connection between who pays the bill and who goes to the polls on election day. If you look at it in real terms, you'll find that there's a connection between the people who go to the polls, who are the voters—they usually get a better deal out of the taxation system than the people who are just paying the taxes, such as industrial-commercial. That's the way it's been. It's that way all over the province. But I think it's important that

somebody then has to set the difference between the two rates.

I support a system where there are more classes. In part of the province we have the industrial class and then we have a large industrial class. They pay a different rate, for all kinds of good reasons. Each municipality justifies the difference, but the rates are set and the disparity between the two is set by the province. I think that's the way it should stay for the city of Toronto too, so that we don't get this system where we get an ever-increasing difference between the high-rise—the best one to use for an example is the multi-residential paying four times, I think it is, or three-something, difference in the city of Toronto between the rate on a multi-residential and a single-family property. I think we have to try to move away from that, as opposed to making that forever entrenched in the city of Toronto.

Mr. Tabuns: I don't disagree when the member talks about the inequity of single-family dwelling taxes as opposed to taxes charged to tenants in high-rise or multi-unit buildings. I think it's an inequity that needs to be resolved. I know that city of Toronto politicians are well aware of it. Certainly in 1998, after the city had been amalgamated, it was a substantial source of discussion.

I don't know the current status of that inequity. My sense, however, is that the city of Toronto, given the powers to set its rates, to shape its own property tax system, would be politically compelled to deal with that inequity if they have not dealt with it to date.

Insofar as tax payments by industrial and commercial, I would say it is reasonable, in a city where they are accessing a workforce that's well-trained, where they depend on a social fabric that's healthy, where they depend on safety and security provided by social investment through government, that they pay more per square foot than those who live in single-family dwellings or in apartment buildings. I don't think that's an unfair approach to taxation at all. In fact, I would say that to the extent that those operations don't pay a substantial portion of the tax, it is difficult to deal with the social problems that are then left unattended.

I don't think it's unreasonable for us to give the city of Toronto this power. I think they, the people who are elected by the citizens of Toronto, will exercise it to deal with the problems as they see fit, which I thought was the intention of this legislation.

Mr. Hardeman: I thank you very much for the explanation. I do want to clarify. I too believe that the industrial-commercial section should pay more than single-family residential. My concern is strictly that if you go back a number of years, you'll find that there was a great concern that there was an out-migration of industrial-commercial assessment to the area outside of Toronto because of the tax rate. As we find ourselves now with the multi-residential, the disparity got too great to go back in the short term when the problem was realized. I think everyone realizes now that the multi-residential in Toronto is causing a hardship on renters. It's causing rents to be too high. To get back to where it

would be reasonable is much more difficult, but we did get there over time, one step at a time, not realizing what the problem was until it was too late to solve it quickly. That's the same with—

The Chair: Mr. Hardeman, can I ask you to speak into the microphone. It's not a side bar.

Mr. Hardeman: It's not sure that it's that important, Madam Chair.

The Chair: I'm sure it is vitally important, but we do need to capture it for Hansard.

Mr. Hardeman: That's why I think it's so important that we don't let that disparity grow between the industrial-commercial sector—and they are different too—and the residential to the point where the industrial-commercial move out and the city of Toronto has only the people services and the people consuming them there. One of the biggest challenges I see in the city of Toronto—and we see that with the pooling of our social services—is because the city of Toronto, over time, has grown much faster in people and people's needs than it has in the investment area, and that's because the taxation has taken a lot of that investment out into the suburbs. I think there's a risk of that continuing to happen. It's not that I don't think they should pay their fair share; it's just that I don't think we should be instituting a system that will make that out-migration greater as time goes on.

1220

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion?

Mr. Tabuns: Recorded vote.

The Chair: A recorded vote has been requested.

Ayes

Tabuns.

Nays

Brownell, Duguid, Hardeman, Lalonde, MacLeod, Rinaldi.

The Chair: That's lost.

Shall section 268 carry? All those in favour? All those opposed? That's carried.

Mr. Tabuns, you have the next motion.

Mr. Tabuns: Withdrawn, given that the main motion, the previous one, lost.

The Chair: You're going to withdraw it? Thank you.

Shall sections 269 through 282 carry? All those in favour? That's carried.

On Part XII, Limits on traditional municipal taxes, there are no changes from section 283 to section 297. All those in favour? All those opposed? That's carried.

On Part XIII, Collection of traditional municipal taxes, there are no changes or amendments to sections 298 through 336. All those in favour? All those opposed? That's carried.

On Part XIV—

Interjection.

The Chair: I'm sorry, but I'm trying to be efficient here.

On Part XIV, Sale of land for tax arrears (real property taxes), from section 337 to section 360 there are no changes. All those in favour of those sections? All those opposed? That's carried.

On Part XV, Enforcement, on section 361 there are no changes. All those in favour of that section? All those opposed? That's carried.

Mr. Tabuns, you have section 362.

Mr. Tabuns: I move that section 362 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following subsections:

“Surrender of driver's licence and vehicle permit

“(3.1) Without limiting section 7 or 8, city council may pass bylaws requiring the driver of any class of motor vehicle that is regulated under a bylaw for licensing, regulating or governing any business to surrender for reasonable inspection, upon the demand of an inspector appointed by bylaw to enforce the bylaw, his or her driver's licence issued under the Highway Traffic Act or the law of another jurisdiction and the permit for the vehicle issued under section 7 of the Highway Traffic Act or the law of another jurisdiction.

“Restriction

“(3.2) A bylaw passed under subsection (3.1) does not empower the inspector to stop a moving vehicle or to retain the driver's licence or permit for the vehicle after reasonable inspection of it.”

I note that the City of Ottawa Act, 2001, has set a precedent for this, so the city is asking for powers that have already been granted in another jurisdiction. One use this power may be put to is enabling the city to enforce its anti-idling bylaw, which was adopted a number of years ago as a measure to cut down on air pollution and smog in this city. Giving city inspectors the right to enforce that bylaw would contribute to clean air in this city.

The Chair: Comments or questions? Seeing none, all those in favour of the motion?

Mr. Tabuns: Recorded vote.

The Chair: A recorded vote has been requested.

Ayes

Tabuns.

Nays

Brownell, Duguid, Flynn, Hardeman, Lalonde, MacLeod, Rinaldi.

The Chair: Shall section 362 carry? All those in favour? All those opposed? That's carried.

Committee, there are no amendments to sections 363 through 371. All those in favour of those sections? All those opposed? That's carried.

Mr. Tabuns, you have section 372.

Mr. Tabuns: I move that section 372 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following clause after clause (a):

“(a.1) the entry is made for the purpose of inspecting rental property;”

It's simply to give the city the ability to inspect to see that in fact city bylaws are being respected and adhered to, a protection for tenants, in most cases, in a single-family dwelling where you have multiple tenants. That is where it would be most effective and most used.

The Chair: Comments or questions?

Mr. Duguid: We won't be supporting this. We believe tenants should have the same rights as homeowners and in this case there wouldn't be a level playing field between homeowners and tenants. Tenants should have the same rights. We don't think this would be fair to tenants, to suggest that somehow their rights of entry are different than anybody else's.

Ms. MacLeod: I'd like to echo that I feel the same way. I think we have to have a level playing field.

Mr. Tabuns: In my previous life as a Toronto city councillor, I often had to deal with absentee landlords who ran disruptive houses, who broke bylaws, demoralized the tenants who were living in their properties and were extraordinarily difficult to deal with. Those absentee landlords play a variety of interesting games. It would be advantageous to the city of Toronto, in dealing with houses that are sometimes called crackhouses or otherwise houses that are run by absentee landlords and are disruptive of neighbourhoods, to give the city of Toronto authority to act in a variety of ways when we encounter those problems.

The city of Toronto, I would say, is not at all a city that could be called anti-tenant, but it does want to ensure that neighbourhoods are protected to the extent the city can protect them. I will address that further in the next motion. I would say it's to the advantage of those of us sitting around this table today to give the city those powers so that it can deal with social and, frankly, landlord problems that it currently has a great deal of difficulty dealing with.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion?

Mr. Tabuns: A recorded vote.

The Chair: A recorded vote has been requested.

Ayes

Tabuns.

Nays

Duguid, Brownell, Flynn, Hardeman, Lalonde, MacLeod, Rinaldi.

The Chair: That's lost.

Shall section 372 carry? All those in favour? All those opposed? That's carried.

There are no amendments to sections 373 through 376. Shall it carry? All those in favour? All those opposed? That's carried.

Mr. Tabuns: you have 377.

Mr. Tabuns: I move that section 377 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following subsection:

“Same

“(2) If, in connection with a duty or liability described in subsection (1), an order is made or an agreement entered into relating to land,

“(a) the order or agreement may be registered against the land to which it applies; and

“(b) the city may enforce the order or agreement against the owner and any and all subsequent owners of the land.”

Last week, I had an opportunity to talk to the superintendent of one of the police divisions in my riding. They deal with absentee landlords who are buying houses on a speculative basis, filling them with people. When problems arise with those houses, the actions of absentee landlords who are served with notices by the city, orders by the city—simply disappear. They sell their house to another numbered company which they control. The city has to start all over. When that process works its way through and that numbered company gets hit with an order, then that one is folded and another one appears. So you get a series of identities used to insulate the real owner from action by the city. This would give the city the power to actually get at landlords who engage in this sort of activity. I think it would make sense to give the city that power.

Again I should note that dealing with speculative absentee landlords who run houses that are highly problematic to a neighbourhood and to the police is in the interest of this Parliament and this city. If there is no further debate, I would like a recorded vote on this one.

1230

The Chair: No further comments? A recorded vote has been requested.

Ayes

Tabuns.

Nays

Brownell, Duguid, Flynn, Hardeman, Lalonde, MacLeod, Rinaldi.

The Chair: That's lost.

Shall section 377 carry? All those in favour? All those opposed? That's carried.

There are no changes to sections 378 through 384. Shall it carry? All those in favour? All those opposed? That's carried.

Part XVI, liability of the city, there are no changes in sections 385 through 388. Shall it carry? All those in favour? All those opposed? That's carried.

Part XVII, other city bodies, section 389: Shall it carry? All those in favour? All those opposed? That's carried.

Mr. Tabuns, you have section 390.

Mr. Tabuns: There are three motions here. I will just state the reason, and then I'll go through the motions. I understand the process.

The motion seeks to remove a provision that gives the TTC the right to set fees and charges without council approval. The city should have the discretion to determine whether these powers should be granted to the Toronto Transit Commission. That's the effect of these amendments.

I move that subsection 390(1) the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out.

The Chair: Any comments or questions?

Mr. Duguid: My read of this is that this is certainly something the city should decide on, but if you just gave a private corporation the ability to step in and start providing service within Toronto—and this issue came up not too long ago in the city—there's nothing to stop that private corporation from scooping all the good routes, the economic routes, at the expense of the non-economic routes, and the TTC and taxpayers would be left to find ways to try to fund the routes that don't make economic sense—in other words, don't have the ridership. They're important routes for people to get around the city, but they may not have the ridership to keep them economic. So I think this would be a dangerous route to go. Certainly it's something that should be left up to the city to determine how they would rather proceed.

Mr. Hardeman: I couldn't believe the explanation I just heard, because surely the city council would not deprive the people on those unprofitable routes of service just to save money. We've been talking about having respect for the decision-making abilities of the city. That's what this whole act was about. Now we're saying that giving them the power to set rates or to approve rates, we don't think they would do that in the best interests of all the people in the city?

The Chair: Is that a question?

Mr. Hardeman: Yes, it's a question to the parliamentary assistant, because I think that's what I heard in his explanation, that they might discontinue non-profitable routes just to save money.

Mr. Duguid: No, I think you totally misunderstood what I was saying.

Mr. Hardeman: Okay. That's why I wanted to clarify it.

Mr. Duguid: This issue came up not long ago in the city of Toronto, and it's a case of the ability of private corporations or private services to provide public transit. On the surface, it sounds like a great idea. The problem that many have—the TTC—is that if you allowed that to happen, the economic routes that the city provides, the routes that could make money, that do make a profit for the TTC, could be skimmed off by the private sector, and the revenues from those profitable routes could not then

be used to subsidize the unprofitable routes, which would mean that the people coming in from the far reaches of the city would potentially lose their service, or taxes would have to go sky-high to subsidize those non-economic routes.

The Chair: Any further comments or questions? All those in favour of the motion? All those opposed? That's lost.

Mr. Hardeman: A recorded vote.

The Chair: A recorded vote after the vote? I'm going to say no. You have to act a little quicker.

Shall section 390 carry? All those in favour? All those opposed? That's carried.

Mr. Tabuns, you have the next motion.

Mr. Tabuns: I move that subsection 391(3) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out.

The same argument, Madam Chair.

The Chair: Okay. Does anybody want a recorded vote before I start taking the vote on this one? No? Okay.

All those in favour of the motion? All those opposed? That's lost.

Shall section 391 carry?

Mr. Hardeman: A recorded vote.

The Chair: A recorded vote has been requested on section 391.

Ayes

Brownell, Duguid, Flynn, Lalonde, Rinaldi.

Nays

Hardeman, MacLeod, Tabuns.

The Chair: That's carried.

Mr. Tabuns, you have the next—392.

Mr. Tabuns: I move that subsection 392(1) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out.

Same argument, Madam Chair.

The Chair: Any questions or comments? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 392 carry? All those in favour? All those opposed? That's carried.

Section 393 has no changes. Shall it carry? All those in favour? All those opposed? That's carried.

A government motion on 394. Mr. Lalonde.

Mr. Lalonde: I move that subsection 394(1) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by striking out "are used by the TTC for the purpose of a passenger transportation system, or as car yards or shops in connection with the passenger transportation system" and substituting "are used by the TTC for the purposes of a passenger transportation system, including car yards and shops used in connection with the passenger transportation system,"

The Chair: Any comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Tabuns: Motion 107 is withdrawn on the grounds of similarity to the previous motion.

The Chair: Thank you very much. You have the next motion.

Mr. Tabuns: I move that subsection 394(1) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by striking out "So long as any lands and easements owned by the city or by the TTC" at the beginning and substituting "So long as any lands and easements owned, leased or occupied by the city or by the TTC".

Simply, right now lands that are owned by the TTC for these purposes are exempt from property taxes. They're subject to payment in lieu. If in fact a commuter parking lot is on land leased by the TTC, it should be treated for purposes of taxation in the same way as a property that's owned.

The Chair: Any comments or questions?

Mr. Hardeman: Should who the tenant is decide whether the property is taxable or not? It would seem to me this is going to create a problem when you have the city being the lessor—the property is not taxable—but in fact the owner is going to charge lease rates based on it being taxed.

Mr. Tabuns: I would argue that the city of Toronto and the TTC will negotiate with landowners and will notice that a landowner is charging a rate higher than they, in turn, are being charged for taxes. So that particular concern is not one that bothers me in this case. I understand the reason for the question, but I think the city's approach to this is a practical one.

The Chair: Any further comments or questions? All those in favour of the motion? All those opposed? That's lost.

Shall section 394 carry, as amended? All those in favour? All those opposed? That's carried.

There are no changes to sections 395 through 397. Shall they carry? All those in favour? All those opposed? That's carried.

1240

Government motion 398: Mr. Rinaldi.

Mr. Rinaldi: I move that subsection 398(2) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be struck out.

The Chair: Any comments or questions?

Mr. Hardeman: I just wanted clarification on what we're actually doing here.

Mr. Duguid: This specific power for the Toronto Police Services Board to impose fees is not required. The board already has much broader powers to impose fees under another section, section 9 of the act. They already have these powers so it's not required here.

Mr. Hardeman: It's just a redundancy.

Mr. Duguid: Yes. It's more technical, I guess.

The Chair: Further comments or questions? Seeing none, shall the motion carry? All those in favour? All those opposed? That's carried.

Mr. Tabuns, I believe your motion is a very similar one.

Mr. Tabuns: Your belief is correct, Madam Chair. Thus, I withdraw it.

The Chair: Thank you very much.

Shall section 398, as amended, carry? All those in favour? All those opposed? That's carried.

Committee, there are no changes to sections 399 through 411. Shall they carry? All those in favour? All those opposed? That's carried.

The next motion is the new section 411: Mr. Tabuns.

Mr. Tabuns: I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 411:

"Toronto Centre for the Performing Arts

"Status

"411.1 The Toronto Centre for the Performing Arts is deemed to be a city board."

I think it's fairly straightforward.

The Chair: Any comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

The next motion, 112, is yours.

Mr. Tabuns: I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 411:

"Toronto Economic Development Corporation

"Status of board

"411.2 The city of Toronto Economic Development Corporation is deemed to be a local board of the city for the purposes of clauses 145(b), (c) and (d)."

The Toronto Economic Development Corporation has been a board controlled and appointed by the city for quite a while, so I'm a bit surprised that it's not counted as a local board, and I would suggest that we make it so within the act.

Ms. MacLeod: May I ask perhaps our staff why that was omitted, what the rationale is for the series of boards that Mr. Tabuns is actually asking to be included?

The Chair: Maybe Mr. Duguid could.

Mr. Duguid: It's not something that we're opposed to in principle, but it's something that we can do through regulation. It needs a little more thought before we move forward. There are a number of things that would be looked at that would have to be done through regulation. We're not opposed to the concept, but including it here—we're not ready yet to fully support it.

Ms. MacLeod: Thank you for that clarification.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Next is section 412: Mr. Brownell.

Mr. Brownell: I move that the English version of section 412 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by striking out "corporation" and substituting "body corporate".

The Chair: Comments or questions? Ms. MacLeod.

Ms. MacLeod: Just a clarification on the change in terminology, the rationale?

Mr. Duguid: We actually had this debate on the first day.

Ms. MacLeod: I wasn't here. Was this before or after I was elected?

Mr. Duguid: It's just a legal term to make it consistent with the Municipal Act.

Mr. Hardeman: I was just going to suggest a thank you to my colleague Ms. MacLeod for asking the question, because it had been a week or so since we had the lengthy discussion about "corporation" and "body corporate" that I had somewhat forgotten. Thank you very much for that.

The Chair: Okay. Is everybody happy with the motion? No further questions? All those in favour of it? All those opposed? That's carried.

There's another good motion following it, but exactly the same; I presume you'll withdraw it?

Mr. Tabuns: Withdrawn.

The Chair: Thank you very much.

Shall section 412, as amended, carry? All those in favour? All those opposed? That carries.

Government motion on section 412.1: Mr. Flynn.

Mr. Flynn: I move that the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by adding the following section after section 412:

"Sinking fund committees

"Committees continued

"412.1 Every sinking fund committee that exists immediately before this section comes into force is continued as a local board of the city."

The Chair: Any comments or questions? Seeing none, all those in favour of the motion? All those opposed? That carries.

Shall section 412.1, as amended, carry? All those in favour? All those opposed? That carries.

Committee, we have no changes to part XVIII, transition, sections 413 to 422. Shall it carry? All those in favour? All those opposed? That carries.

Government motion on section 423: Mr. Lalonde.

Mr. Lalonde: I move that subsection 423(1) of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by striking out "is continued until it is dissolved by the city" at the end and substituting "is continued as a local board of the city until the board of management is dissolved by the city".

The Chair: Any discussion?

Mr. Hardeman: Why is it required for the board of management as opposed to not fitting in with the section as it presently is: "Every board of management that exists immediately before this section comes into force for a business improvement area in the city is continued until it is dissolved by the city"? Why was that not sufficient?

Mr. Duguid: All I know is that this clarifies that the city can make changes to the boards, but the legal reason why it was necessary to clarify I can't answer. We could get staff, perhaps, but it's more technical.

The Chair: Are you okay with that explanation? No further comments or questions? All those in favour of the motion? All those opposed? That's carried.

Again, another good motion, Mr. Tabuns.

Mr. Tabuns: Good, but withdrawn.

The Chair: Thank you.

Shall section 423, as amended, carry? All those in favour? All those opposed? That's carried.

Committee, there are no changes to sections 424 through 426. Shall they carry? All those in favour? All those opposed? That's carried.

Part XIX, miscellaneous matters: There are no changes from 427 through 445. Shall they carry? All those in favour? All those opposed? That carries.

That takes us to section 446. A government motion: Mr. Rinaldi.

Mr. Rinaldi: I move that section 446 of the City of Toronto Act, 2006, as set out in schedule A to the bill, be amended by striking out the portion before paragraph 1 and substituting the following:

"Emergency measures

"446 Without limiting sections 7 and 8, those sections authorize the city to do the following things for emergency response purposes:"

The Chair: Any comments or questions? Seeing none, all those in favour of the motion? All those opposed? That carries.

Mr. Tabuns.

Mr. Tabuns: Same fate, Madam Chair.

The Chair: I think it's a very good motion. Thank you for withdrawing it.

Mr. Tabuns: It already passed.

The Chair: Shall section 446, as amended, carry? All those in favour? All those opposed? That carries.

Sections 447 through 455 have no amendments. Shall they carry? All those in favour? All those opposed? That carries.

There are no changes to the preamble. Shall it carry? All those in favour? All those opposed? That carries.

Shall schedule A, as amended, carry? All those in favour? All those opposed? That carries.

Now schedule B: "Public Acts: Repeals and Amendments." There are no changes to sections 1 and 2. Shall they carry? All those in favour? All those opposed? That carries.

On section 3, there's a government motion: Mr. Brownell.

1250

Mr. Brownell: I move that section 3 of schedule B to the bill be amended by adding the following section:

"(3.1) On the day that section 1 of schedule E to Bill 14 comes into force, the City of Toronto Act, 2006 is amended by adding the following section:

"Continued application of the Provincial Offences Act

"369.1 Section 75.1 of the Provincial Offences Act does not apply with respect to a contravention of a bylaw passed under this act."

The Chair: Any comments or questions? All those in favour of the motion? All those opposed? That carries.

Shall section 3, as amended, carry? All those in favour? All those opposed? That carries.

Sections 4 and 5 have no changes. Shall they carry? All those in favour? All those opposed? That's carried.

Section 6: Mr. Tabuns.

Mr. Tabuns: I move that subsection 6(3) of schedule B to the bill be amended by adding the following subsection to section 128 of the Highway Traffic Act after subsection (6.4):

"Same

"(6.5) Despite clause (1)(a), the council of the city of Toronto may by bylaw provide that no person shall drive a motor vehicle at a rate of speed greater than 40 kilometres per hour on a highway within the city."

This is just giving the city of Toronto the power to set the speed limit on different classes of streets.

The Chair: Any comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's lost.

Shall section 6 carry? All those in favour? All those opposed? That's carried.

There are no changes to sections 7, 8 and 9. Shall they carry? All those in favour? All those opposed? That's carried.

Mr. Tabuns?

Mr. Tabuns: I move that section 70.1 of the Municipal Elections Act, 1996, as set out in section 10 of schedule B to the bill, be amended by adding the following subsection:

"Restriction on contributions, candidate for mayor

"(5) Despite subsections 71(1) and (2), the maximum total contribution a contributor may make to a candidate for the office of mayor of the city of Toronto is \$2,500."

The Chair: Any comments or questions?

Mr. Duguid: We're going to support this. We're going to make this change to the Municipal Act anyway. Mr. Tabuns has worked so hard on this legislation. We've got to give him at least one victory here, so we'll support this.

Mr. Tabuns: I appreciate it.

Mr. Flynn: It's the Tabuns amendment.

Mr. Hardeman: Now that we're into the spending limits and so forth, I'm just wondering why it is only for the mayor as opposed to everyone.

Mr. Tabuns: I don't know why the city of Toronto requested just that cap on the mayor.

Mr. Hardeman: I guess my question might be, is it because he was the only mayor there?

The Chair: I think that was a rhetorical question. No further comments or questions? Shall the motion carry? All those opposed? That's carried.

Shall section 10, as amended, carry? All those in favour? All those opposed? That's carried.

Section 11: There are no amendments. Shall it carry? All those in favour? All those opposed? That's carried.

In section 11.1, the NDP has put forward a motion, but I believe it's out of order. But you have to read it before I can rule it out of order, just so you know.

Mr. Tabuns: Then I'll read so you can rule.

I move that schedule B to the bill be amended by adding the following section:

"Provincial Offences Act

"11.1 The Provincial Offences Act is amended by adding the following section:

"Penalties for certain offences in the city of Toronto

"2.1 If administrative penalties are established under section 81 of the City of Toronto Act, 2006 for failure to comply with any bylaws respecting the parking, standing or stopping of vehicles, the penalties established under this act do not apply with respect to the contravention of the city bylaws respecting the parking, standing or stopping of vehicles."

Why would you rule that out of order?

The Chair: Because the Provincial Offences Act hasn't been opened in Bill 53. That's why I cannot rule it in order.

Sections 12 and 13 have not got any amendments. Shall they carry? All those in favour? All those opposed? That's carried.

There's a government motion on section 14: Mr. Flynn.

Mr. Flynn: I move that section 14 of schedule B to the bill be struck out and the following substituted:

"Commencement

"14(1) Subject to subsection (2), this schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

"Same

"(2) Subsections 11(2) and (4) of this schedule come into force on the day the Stronger City of Toronto for a Stronger Ontario Act, 2006, receives royal assent."

The Chair: Any comments? Mr. Hardeman.

Mr. Hardeman: I just want to point out for the record that a number of deputants came forward and said that this act should not be enacted and come into force until such time as the city had designed their new form of structure of governance, because they felt there was a connection between how the city was going to govern with the new council and new committee structures and some of the powers that the city is getting under the new act.

The act is quite clear on and points out the connection between governance and the need for change of governance, and if the city can't come up with an appropriate governance model, the province will step in and make that happen. This is all directly related to the rest of the act, which implements the new authority and the new abilities that the city will have. I think we've had considerable discussion about the new powers, shall we say, that the city will have, and they are all related to the structure of the new city council. Everyone, including the mayor, came forward and said that the present structure is not adequate to deal with the situation as the act proposes.

I will not support this issue that designs when the act will be implemented, with no consideration given to what we were told by almost all the people, that there was a connection between the design of structure in the city of Toronto and the powers that this act is going to give them. I think there should be a connection between royal

assent and proclamation and that restructuring of city council.

The Chair: Mr. Duguid.

Mr. Duguid: Very briefly, the need for making sure that this initiative is in place upon royal assent is to ensure that there's not a rush to destroy heritage properties between royal assent and proclamation of the bill, which would not be, I think, until the end of the year. Just to clarify for the member opposite, that's the reason this amendment is here. He may have another reason for not supporting it, and that's fine.

The Chair: Any further comments or questions? Seeing none, shall the motion carry? All those in favour? All those opposed? That's carried.

Shall section 14, as amended, carry? All those in favour? All those opposed? That's carried.

Shall schedule B, as amended, carry? All those in favour? All those opposed? That's carried.

Schedule C: Section 1 has no changes that I can see. Shall it carry? All those in favour? All those opposed? That's carried.

Section 1.1: Mr. Tabuns, I believe it's out of order. Again, you have to read it, and then I—

Mr. Tabuns: I move that schedule C to the bill be amended,

(a) by adding to the heading for the schedule "and amendments" after "repeals"; and

(b) by adding the following section:

"City of Toronto Act, 1985

"1.1 Section 9 of the City of Toronto Act, 1985, being chapter Pr22, is amended by adding the following subsection:

"Activities re small businesses

"(6) The city of Toronto Economic Development Corporation, which was incorporated under the authority described in subsection (1), may exercise the powers described in section 84 of the City of Toronto Act, 2006, with necessary modifications."

The Chair: Just so you know why I rule it out of order, it's because the City of Toronto Act, 1985, hasn't been opened in this legislation; that part hasn't been opened.

Section 2 has no amendments. Shall section 2 carry? All those in favour? All those opposed? That's carried.

Shall table 1 carry? All those in favour? All those opposed? That's carried.

Schedule C has no changes in it. Shall it carry? All those in favour? All those opposed? That's carried.

Going back to the first day we started, when we had sections 1, 2 and 3, short title: Shall it carry? All those in favour? All those opposed? That's carried.

Shall the title of the bill carry? All those in favour? All those opposed? That's carried.

Shall Bill 53, as amended, carry? All those in favour? All those opposed? Carried.

Shall I report the bill, as amended, to the House? All those in favour? All those opposed? Carried.

That concludes this committee's consideration of Bill 53. I'd like to thank all my colleagues on the committee

for their work on their bill. The committee thanks the ministry staff and the members of the public who contributed to our committee's work.

This committee now stands adjourned until the call of the Chair. Thank you.

The committee recessed from 1301 to 1601.

SUBCOMMITTEE REPORT

The Chair: Good afternoon. The standing committee on general government is called to order. We're here today to conduct public hearings on Bill 109, An Act to revise the law governing residential tenancies.

Our first order of business is the adoption of the report of the subcommittee on committee business. Mr. Rinaldi, could you move the report and read it into the record?

Mr. Rinaldi: Your subcommittee on committee business met on Thursday, May 18, 2006, and recommends the following with respect to Bill 109, An Act to revise the law governing residential tenancies:

(1) That the committee shall meet for public hearings at Queen's Park on Monday, May 29, 2006, from 4 p.m. to 6 p.m.; on Wednesday, May 31, 2006, from 4 p.m. to 6 p.m. and from 7 p.m. to 9 p.m.; and on Monday, June 5, 2006, from 4 p.m. to 6 p.m.

(2) That the evening time of 7 p.m. to 9 p.m. on Wednesday, May 31, 2006, be reserved for individuals.

(3) That the committee shall meet on Wednesday, June 7, 2006, at 3:30 p.m. for clause-by-clause consideration of the bill.

(4) That the committee clerk, with the authority of the Chair, post information regarding the committee's business on the Ontario parliamentary channel, the committee's website and one day in the Toronto Star.

(5) That interested people who wish to be considered to make an oral presentation on Bill 109 should contact the committee clerk by 5 p.m., Wednesday, May 24, 2006.

(6) That, if required, the committee clerk supply the subcommittee members with a list of requests to appear received, and that the list be sent to the members of the subcommittee by 6 p.m. on Wednesday, May 24, 2006.

(7) That, if required, each of the subcommittee members supply the committee clerk with a prioritized list of the names of witnesses they would like to hear from by 12 noon, Thursday, May 25, 2006, and that these witnesses must be selected from the original list distributed by the committee clerk to the subcommittee members.

(8) That the committee clerk, in consultation with the Chair, be authorized to schedule witnesses from the prioritized lists provided by each of the subcommittee members.

(9) That if all groups can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties and no party lists will be required.

(10) That groups and individuals be offered 10 minutes in which to make a presentation.

(11) That, in order to accommodate out-of-town witnesses, video and teleconferencing be offered.

(12) That the deadline for written submissions be 12 noon, Monday, June 5, 2006.

(13) That the research officer prepare an interim summary of the testimony heard.

(14) That the deadline for filing amendments, as determined by the orders of reference dated May 16 and May 17, 2006, be 12 noon on Wednesday, June 7, 2006.

(15) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the sub-committee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair: Any debate on the subcommittee report? Seeing none, all those in favour? All those opposed? That's carried.

RESIDENTIAL TENANCIES ACT, 2006

LOI DE 2006 SUR LA LOCATION À USAGE D'HABITATION

Consideration of Bill 109, An Act to revise the law governing residential tenancies / Projet de loi 109, Loi révisant le droit régissant la location à usage d'habitation.

ADVOCACY CENTRE FOR TENANTS ONTARIO

The Chair: I'd like to welcome all our witnesses and guests here today. Our first group is the Advocacy Centre for Tenants Ontario. Welcome. When you begin, if you're all going to speak, I'm going to need all your names and the group you speak for, for Hansard. You'll have 10 minutes after you've introduced yourselves. I'll give you a one-minute warning if you get close to the end. If you leave some time, there will be an opportunity for us to ask questions.

Ms. Kathy Laird: My name is Kathy Laird. I'm the director of legal and advocacy services at the Advocacy Centre for Tenants Ontario. With me here today is Jennifer Ramsay, the advocacy and outreach coordinator for the Advocacy Centre for Tenants, and Grace Vaccarelli, staff lawyer.

The Tenant Protection Act, which we are here today to bury, created a perfect storm that caught up thousands of tenants in this province. The legislation encouraged eviction applications, and between June 1998 and December 2005, almost 400,000 eviction applications were filed against tenant households. Under the so-called Tenant Protection Act, more than 220,430 tenant households were ordered evicted without a hearing. The TPA turned the new Ontario Rental Housing Tribunal into an eviction machine. Tenant advocates said so, but so did one of its adjudicators in a decision released in January of this year.

Just so everyone knows how it worked, if a tenant got a notice of eviction hearing and went to the tribunal on

their hearing day to tell their side of the story, they would find out when they got there that they weren't on the hearing docket and they had already been ordered evicted, and that was because they missed the five-day filing period.

I want to tell you what the previous Ontario Ombudsman said about this process in the 2003-04 annual report: "...the default eviction process has resulted in large numbers of individuals being evicted without mediation or a hearing on the merits. I am particularly concerned that such evictions may have disproportionate consequences for vulnerable tenants: seniors, single parents with small children, individuals with disabilities and those for whom English is not a first language."

The Liberals took power promising to remove the draconian aspects of the Tenant Protection Act. In ending the process of evictions without a hearing, this legislation represents a victory for access to justice. It is a social justice victory, because it should mean the end of a process where those who are most vulnerable are most at risk of losing their housing unfairly.

There are some particular areas where we think Bill 109 needs amendment. We've given you our detailed submissions on that and you all have the bound package of those amendments. There are only a couple of things that I want to touch on in my oral remarks. Overall, our suggested amendments are one of two types:

—areas where the bill does not include an important tenant protection provision that was a feature of the previous Landlord and Tenant Act; or

—areas where the bill brings in a previously unknown provision that we think is out of keeping with the package of rights and responsibilities under the regime.

1610

In the first category, the suggested amendment that I'll draw your attention to is the need to include a mechanism for a tenant to bring an application to set aside an eviction order that is made in their absence. This is found on page 2 of your package. This is something we had under the Landlord and Tenant Act. If you missed your first hearing date in front of the registrar, you could bring an application to set that aside, provided you met the threshold, and that threshold was that you had a good reason for not being there and that you had merits to be argued in a hearing.

That's what we're asking for: Restore us to the position we were in under the landlord and tenant legislation. I'd just like to point out that if that isn't put in place, those tenants who, for good cause, are unable to attend their hearing on the first date—a date which is set with only landlord input and no tenant input into that date, I'd point out—those tenants will lose a whole package of protections in this legislation, including the right to rely on all the circumstances affecting their tenancy and the ability to raise maintenance issues, if that is a factor in the dispute.

This wouldn't be much work for the tribunal. Currently, set-aside applications represent about 8% of all applications. We would expect that it would be much

less under this process. So it's not a huge work impact, but it is an important justice feature that we have had under all previous legislation.

The second category, I'll quickly point out to you, is the provision dealing with undue damage. It's on page 5. For the first time—I'm hoping this is just a drafting error—the words "wilful" and "negligent" do not appear, and they have been in all previous legislation. What this means is that if a tenant, through no fault of their own, causes damage to the unit, the tenant is strictly liable. Of course, in our civil liability law, liability follows fault—negligent or wilful conduct. That was in previous legislation. We hope the government will certainly add it to this.

The example I would give is an Ottawa case where a tenant bought a defective light and left it on while they were having dinner in the other room. The light caught fire. There was damage to the unit. The Ontario Rental Housing Tribunal held the tenant responsible, although they were not at fault; it was a defective lamp. The court overturned that finding. In our law, you can't be held strictly liable where you're not at fault. Landlords, of course, have insurance to cover just this type of loss. So we're looking for an amendment in that area.

There are three other issues I want to touch on briefly. How am I doing for time?

The Chair: You have about four minutes.

Ms. Laird: The submetering provisions: Landlords will now be allowed to take utilities out of the package of services that a tenant receives for their rent. In our view, this has questionable value as a conservation measure. We understand that conservation is high on this government's agenda; however, we think it will take incentives off landlords. Landlords are the ones who have control over windows, appliances and insulation. They have control over the high-impact items. If they are allowed to take utilities out of the rent, tenants are left holding an increasing cost item. Unless we get this right in regulations, landlords will be able to walk away scot-free. So we're looking to solve this problem in regulations and we're hoping to work with the government on that.

The next item I want to touch on is evictions for rent subsidy revocations. I'll try to keep this really brief. The previous government brought in two pieces of draconian housing legislation, and the other one was the Social Housing Reform Act. The SHRA, as we call it, radically changed the relationship between social housing tenants and their landlords by providing that a rent subsidy would cease whenever a tenant failed to comply with a filing requirement. What this means is that tenants are losing their subsidies, not because they no longer qualify but because they failed to file the piece of paper that shows they no longer qualify.

In social housing you have a disproportionate representation of tenants who have disabilities, who are elderly, who are single moms of young children living on social assistance. This is a group that has in the past sometimes missed this deadline. We never saw evictions before we had the SHRA. The housing providers would

wait and would get that information. Now tenants are being evicted for rent arrears that have arisen due to the subsidy revocation, even though they still qualify.

Where this ties into this piece of legislation is under section 203 of Bill 109. Social housing tenants will lose the right to raise those issues at a hearing in front of the new Landlord and Tenant Board. In the past, legal clinics have raised this across the province. Sometimes we have gotten the tribunal to hear us, sometimes not. Under section 203, we will never be able to raise the merits. I'd just like to point out to you that that means we'll have two classes of tenants in the province: tenants in private housing who can raise the merits of an arrears application, to use the most common example, and tenants in public housing, who are caught, who can't say, "Look, I'm still on welfare, I still qualify. I just didn't file the paper in time." Those tenants will not be able to rely on the eviction relief provisions in this legislation. So we're hoping that provision will not be proclaimed, at least until social housing tenants gain a forum for independent review of subsidy revocation decisions. It can be the Landlord and Tenant Board, or it can be the Social Benefits Tribunal, but there has to be somewhere where you can go and get a hearing on the merits.

Finally, I just want to touch on vacancy decontrol.

The Chair: You have one minute left.

Ms. Laird: Obviously, tenants lobbied hard to get vacancy decontrol out of the legislation. We were unsuccessful. I just want to point out that we still have a critical affordable housing crisis in this province. Rents have continued to rise in every central metropolitan area across the province, despite improved vacancy rates. The rates may have slowed down, but the rents continue to go up. Some 42% of Ontario tenants pay 30% of their household income on shelter costs and the social housing waiting list across the province stands at 122,426 households. A recent ONPHA—Ontario Non-Profit Housing Association—survey in April 2006 found that 80% of the households on the waiting list had gross incomes below \$20,000, so this is a very vulnerable population. The reason we wanted rent regulation on vacant units is that we wanted to lose no more of the affordable housing units that have been slipping through our fingers. Obviously, in the absence of rent regulation on vacant units, it's even more critical that the government keep its commitment to bring on-stream the affordable housing units that are promised under the federal-provincial affordable housing program. Thank you.

The Chair: Thank you. You've exhausted your time. We appreciate your report, and we've got your handout. Thank you very much.

HAMILTON AND DISTRICT APARTMENT ASSOCIATION

The Chair: Our next delegation is the Hamilton District Apartment Association. Good afternoon, and thank you for being here today. We have your handout.

As you get yourself settled, once you begin and you've introduced yourself and the organization you speak for, you'll have 10 minutes. I'll give you a one-minute warning if you get close to the end. If you leave time, there will be an opportunity for us to ask questions.

Mr. Arun Pathak: Good afternoon, my name is Arun Pathak, and I am the president of the Hamilton and District Apartment Association. The association has about 150 members who own or manage about 20,000 rental units. I myself have been an involved property manager for over 20 years. I am also the chair of the Halton Housing Advisory Committee, which is set up by the region to advise regional council and to try to find housing solutions for those struggling to maintain a reasonable quality of living.

Before getting into specific issues of the legislation, I want to give you a background of landlords, the types of tenants and the way our industry has been historically treated. Landlords have been typically viewed as in opposition to tenants and the government. This isn't true. We value tenants. They are our valued customers. They keep us working. The reason we are viewed as adversaries is because we cannot discontinue our services and are often trying to collect payments, long after the services have been used, from people in poverty.

Also, we don't want to oppose our government either. We want to find a solution that allows our tenants to live and afford the housing we provide. The reason we typically have issues with government is that we feel that it has let its people down. No government has provided a strong, sustainable solution for the housing needs of its people. Instead, they've passed the problem of poverty onto the rental housing industry. This is not a problem that can be solved by reducing the ability of our industry to survive.

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Let me also explain further through highlighting the different types of tenants that exist. Some time ago I had the sheriff come to do an eviction and his comment was, "I know this person. I've evicted him three times recently." These are the tenants who will benefit from the new legislation. On the other end of the scale, I have tenants who talk to me about my health and their families. Some bring me presents when they go on vacation or at Christmas, or bring me pies when they're baking.

The pay their rent on time, and these tenants don't know or care what the tribunal is, or about the proposed legislation. They are the silent majority of tenants who are not helped by this legislation the way bad tenants are. When I say silent majority, I mean you won't hear from them, because they are satisfied with our services. This majority is composed of good tenants who work hard, sometimes at more than one job, in order to pay their bills on time, including their rent. It isn't always easy for them, and we also need to consider the effect we are having on these people, who struggle but manage to keep up with their responsibilities.

When the government passes the buck and makes the rental housing industry carry the full burden of poverty

problems, it makes it harder for these good people, who are barely making it, to continue to keep their heads above water.

Let me demonstrate. Most people understand that insurance premiums go up with insurance fraud and the prices at the mall are higher because of shoplifting. This same simple logic tells you that the good tenants suffer because of bad tenants, either through higher rents or less services or less improvements to the building. I can assure you that my buildings would be in better condition and have better appliances and upkeep if I didn't have so many bad debts which I cannot collect.

I know that when property managers talk about rent increases for capital improvements or to cover increases to their costs, this is a concern to many tenants. There are far too many people in Ontario living in poverty. The correct solution to the poverty problem is to ensure that everyone has the income to obtain appropriate housing. We don't ask other industries, even for necessities, to supply goods or services below market because some people cannot afford them. When people cannot afford to pay for groceries, we don't force stores to lower the price on bread to accommodate them. Instead, we provide food banks so that those who need help can get it. Similarly, when someone cannot afford shelter, we should not force landlords to lower their rents, but should provide more subsidies so people who need help can get it.

Let me move on from these larger problems that the legislation reinforces and discuss some of the more direct problems. One of the things that helps the bad tenants in this legislation are the delays in the hearings for non-payment of rent. Justice delayed is justice denied. Property owners do not currently get justice because of delays in scheduling hearings, and the proposals will only make things worse.

The perceived problem with default orders could have been solved by wording the hearing notice differently. It could say, "You will face eviction if you do not file a dispute to this application." I said "perceived problem" with the default process because prior to the tribunal, the courts held hearings on all cases, and about 90% of these cases that I saw were undisputed. The proposals will waste time as property managers attend hearings needlessly.

Further delays will be caused by allowing tenants to raise other matters at hearings about rent. It will be a criminal waste of the board's time if property managers are not aware in advance of the issues to be raised and adjournments take place because of this. Also, the time wasted on other issues will bring the board to a standstill. If the legislation is to proceed with hearings for all cases, and other matters may be raised at hearings, then there must be a requirement to notify managers in advance of what issues are to be raised and no other issues added. Also, the board should be mandated by the legislation to schedule hearings to take place within 10 to 15 days.

As a property manager, I'm concerned that some bad tenants may cause damage so that they have a reason to dispute the application.

With more hearings and longer hearings at the board, will the cost of filing an application increase? Because in most cases, the tenant is responsible for paying that.

Another problem with the proposed act is the possibility of orders prohibiting a rent increase or denial of an above-guideline application if there are maintenance issues. All maintenance issues should go through a property standards officer and only be considered if serious and a work order is not complied with within the time allowed. The way it's written, the application for an increase above guideline can be dismissed if there are property standards issues. Again, we could be rewarding vandalism with lower rents. The risk of the application being dismissed this way is a disincentive to improve Ontario's housing stock. Who will want to improve his or her building if the money has to be spent up front and there is no certainty of recovery? The reduction in the amounts that can be allowed for capital expenditure from 4% a year with full carryover to 3% with a two-year limit on carryover will reduce or delay capital expenditure with corresponding losses of jobs in the construction industry.

I want you to know that I didn't come here simply to find problems with the government's proposed solution; I want to fairly evaluate the legislation. This legislation doesn't solve the problem that the citizens of this province cannot afford reasonable housing. We need a sustainable, long-term solution. There are other alternatives, and they need to be considered.

A better option to solve this problem is the equalization of property tax rates. One of the reasons so many tenants in Ontario live in poverty is the extremely high property taxes they pay in their rent. Many municipalities have a multi-residential property tax rate that is between two and three times the residential rate. Why do we reserve a higher rate for those typically in lower income brackets? In Hamilton, Halton and Toronto, tens of thousands of tenants are paying more than \$100 a month in unfair, unjustified taxes because the multi-residential tax rate is so high. Any provincial government that cares about the plight of poor tenants has to look at this issue and force the municipalities to equalize tax rates. Of course, if the objective is politics, then we will not see that happen. But if any MPPs care, they will work on fixing this inequity. Considering the poverty of tenants, a case can even be made for lower multi-residential tax rates than residential.

Another solution would be to offer more shelter subsidies for tenants. We all see the need for the food bank, so why don't we feel that the same support is needed for securing suitable shelter?

The Chair: You have one minute left.

Mr. Pathak: However, if you want to treat the symptom of upset tenants who need assistance, putting in place this legislation may give the impression that the government cares. But it is a solution that only helps the image of the government. Passing this legislation is simpler than forcing municipalities to treat tenants fairly and risk upsetting homeowners, but it doesn't change the

fact that it's the right thing to do and a more sustainable solution to our shared problem.

I want to finish by saying that I stand in opposition to this legislation on behalf of landlords who can see it threaten Ontario's rental housing industry, but I also want to oppose it for the silent majority of tenants who don't even know they are being given this placebo. This isn't an issue of tenants versus landlords; we all want the same thing. I've explained logically the many flaws with this solution and how it doesn't really address the issue of tenants' inability to afford housing. Given time, I could mention many more flaws.

As the government, you have a responsibility to your constituents to do what is in their best interest. This legislation makes it easy to defer your responsibility, as governments have done in the past. But you owe it to all the renters province-wide to provide them with a long-term, sustainable solution that they deserve. Ensure that municipalities don't overtax, and provide tenants with the subsidies they need. I've often accepted late payments and instalments because I feel the pain of tenants who have a problem making ends meet. Do you?

The Chair: Thank you very much for your delegation today. We appreciate your being here.

ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW

The Chair: Our next delegation is the Association of Community Organizations for Reform Now. Welcome. As you get yourselves settled, if you're all going to speak, I need you to identify everybody who is speaking. But if it's just one person, you can identify yourself and the organization you speak for. After you've done that, you'll have 10 minutes. I'll give you a one-minute warning when you get close to the end.

Ms. Marva Burnett: Good afternoon. My name is Marva Burnett, and I am here to comment on the government's proposed Bill 109, the Residential Tenancies Act, on behalf of ACORN members across the province.

For starters, I'd like to tell you about ACORN. We are the Association of Community Organizations for Reform Now. We are working families fighting for working families. In essence, we are just working families. Although we have been ruffling feathers in property management offices for a couple of years, we do this by default. Rest assured: We are winning. In Toronto, sadly, we have to fight the Residential Tenancies Act. We are fighting for affordable, livable housing because proposed Bill 109 leaves systemic flaws in our communities' high-rise apartment buildings that force us to pay rising rents and to live in illegal, substandard housing—and when I say “illegal,” I mean illegal.

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Do you know how many high-rises we have that don't have childproof locks on their balcony doors or windows? More than you'll know. When we look at the municipal code, chapter 629, article 4, section 21, our landlord is supposed to have safety locks so our children

won't fall out of these windows. It's happening. It is illegal.

Lenna Bradburn, head of municipal licensing and standards in Toronto, and her associates at city hall all agree there isn't much action that they can take: a \$1,000 fine after a year of warnings or work orders maybe, but it is not reasonable. For instance, if you have an apartment building with 300 tenants who are paying \$1,000 a month in rent, that is \$300,000 a year. If you have to fine a landlord \$1,000 after a year, that's nothing to the landlords, because that's not even a drop in their bucket.

You heard the landlord before me. He said tenants are really middle- and low-income people who are working really hard to pay their rents. In this bill, I read that you guys are going to increase the maximum fine. Do you guys know how many landlords are being given the minimum fine, much less the maximum fine? Since this law was passed, there has been only one maximum fine. If you raise the minimum fine, what is the minimum fine? No one can actually tell you what the minimum fine is for an offence. So if the maximum fine is \$1,000, these landlords are getting away scot-free. We should be doubling the minimum fine instead of the maximum fine, because the maximum fine is not being charged. We need to do this in order to protect the tenants, because we live in real squalor. The reason why there are vacancies out there—yes, I understand that there are vacancies because we have turnovers of units because people move out because they buy homes, but also a big reason is because there are units that are being condemned. We need to look at that when we get on television and start talking about a 3.9% vacancy rate out there. Take everything into consideration before we talk about that, because a lot of us, as tenants, have been living in these units.

Let's get into Bill 109. We're getting rid of the 6% interest on the last month's rent.

Inflation: When the landlords deposit all of the last month's rent they get into the bank, I don't think the bank is paying them inflation. The bank is paying them prime and plus. So for this bill to adjust and give us inflation on our last month's rent is just wrong, because when a landlord deposits the last month's rent for a tenant, it's not just one tenant he's depositing for. He's depositing for 300 units, and that's a lot of money. When he gets that interest, prime plus 1% or 2%, we should be getting back some of that, too, not just inflation.

Getting back to the reason why we need to get rid of the minimum fines, nobody is charging it, because we just went to the rental tribunal at 1775 Weston Road. That landlord has been charged and ordered to pay \$250,000 to the tenants in abatement of rent. However, when they went into court, it was 60-something work orders they had, 63, and then they come out of court and it's 105 work orders in place. That shows you the system isn't working, because nothing is being enforced. Bill 109 should be addressing all of these issues. If you're just going to take Bill 109 off the tenancy act and change two or three things, that's nice. But you can't rush this, because you're affecting all of the tenants who are paying

not just 30% of their income in rent but they're sometimes paying 80% of their income in rent, plus it's the elderly, single parents, people who are living on social assistance, people with disabilities. This bill needs to address all of that.

You're having three committee hearings on this. Today there's a TTC strike. How many people did we get come down here to speak to you guys about this issue that's affecting them? Three committee hearings are not enough for a law that's going to affect so many people's lives. We are asking you to add some more hearings on to the list that you guys have. I think it's well deserved, because you have tenants in London, in Kingston, tenants all over, and these are all the hearings that you guys have. So you need to add more hearings for this bill.

Please don't rush this bill through, because it affects us. I'm a tenant. I have two children and I can tell you that I pay more than 90% of my income in rent. You guys need to know that this affects us daily. As the landlord said, I am one of those tenants who fights to pay her rent on time. You guys have to stop this, really stop and think about it and look at it and do some more consulting. Thank you.

Applause.

The Chair: Excuse me. Sorry. Please don't clap. You're going to cut off the time that people have to speak. I appreciate that you liked what she said, but you're cutting off her ability to speak.

You have about a minute and a half left, so 30 seconds for each party should they want to ask you a question, beginning with Mr. Hardeman.

Mr. Hardeman: Thank you very much for a well-delivered presentation to the committee. I would be the first to say I agree with you on the length of time that's being allotted to hear from the public, on the short notice and on the inability for all the delegates to be able to be heard to make a presentation.

I had the pleasure, if I can call it that, to do the road trip, shall we say, on the Tenant Protection Act, to hear from everyone. I know the issue requires a lot of input and we very much appreciate yours. I wish that the government had decided to do that with this act too, to make sure we heard from everyone. Barring that, we do appreciate your presentation and we will surely take that into consideration as we debate the bill further.

The Chair: Mr. Marchese.

Mr. Rosario Marchese (Trinity-Spadina): Marva, we don't have much time. We know there are a lot of good landlords and we know there are a lot of bad landlords as well. Can you describe what a bad landlord is like?

Ms. Burnett: A bad landlord is my landlord. You fill out 15 work orders and you still don't get it done. You call in the building inspectors. They come in and you still don't get anything done. They're constantly filing court cases with the tribunal. It is false and you only have five days to respond. They're not fixing the buildings. They're just letting everything go and taking the benefits. That is a bad landlord.

The Chair: Mr. Duguid, did you have—

Mr. Duguid: Thank you for taking the time to join us today and for your presentation. We'll take a look at some of the suggestions that you've made, both what you've mentioned and what you have on your paper.

On the one request that you've made regarding public hearings, I'm sure you're aware that we've had the most extensive set of public hearings on this particular piece of legislation that this province has ever engaged in. We went to 10 different cities across the province to have input into the drafting of this legislation. We heard from thousands of landlords and tenants right across Ontario. We're very proud of the fact that a number of submissions made from tenants have actually changed the original intent as we moved forward with the drafting of this legislation.

So tenants have had a great deal of input in what is before us. In fact, if you look at the massive reform of the eviction process, that came about as a result of a lot of input we received from tenants. Your input today is very, very welcome, and I thank you for it.

The Chair: Thank you very much for being here today. We appreciate it.

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EFFORT TRUST

The Chair: Our next group is Effort Trust. Welcome. As you get yourself settled, we have your handout here. Could you introduce yourself and the group you speak for? Once you start to speak, you'll have 10 minutes. I'll give you a one-minute warning. Hopefully, you won't need that much time, and we'll be able to ask you questions if you have time left over.

Mr. David Horwood: Greetings to the committee. Madam Chair, thank you very much. My name is David Horwood. I'm the assistant vice-president of Effort Trust, a Hamilton-based property management and financial services company.

Effort Trust is a landlord that has been in business for approximately 50 years, with a focus on smaller markets: Hamilton, St. Catharines, Welland, Kitchener, Cobourg, Jarvis. We absolutely have our fingers on the pulse of rental housing outside the prime areas in the province. As a result, I think we have a unique perspective on some of the more mundane and less publicized aspects of the way the rental housing market works.

Very briefly, I'd like to recognize the ongoing commitment that MPPs have shown to review this legislation, try to come up with aspects of it that can be improved and ideally help prevent situations like what we just heard, a very passionate and honest account of a sad story in the apartment business.

I would like to mention, though, that I think there are lots of things that have been improved under the legislation as it has evolved over the years, and I wish we could continue to build on that and not take a regressive step. I'm going to give you a few points where I think we may be taking that sort of step right now.

Section 30 of Bill 109 has to do with property standards and orders preventing rent increases. I feel that the legislation, as it is drafted, may force the Landlord and Tenant Board to adjudicate on property issues on which they just don't have the expertise. Municipalities already have building departments and committees that are knowledgeable, credible and reliable in inspecting and enforcing work orders. Where they are not doing their jobs is an area that I believe falls outside of rental tenancies reform.

Any reviews or orders approving rent increases should be limited to official work orders, as issued by the municipalities, and they should be considered within the time limits that have been prescribed in those municipalities. Any application that would prevent a rent increase may have merit and should be treated as such, but it should be accompanied by a formal review and formal documentation to support this claim in order to prevent frivolous or disruptive steps that may prevent the regular operation of our business.

Section 78 has to do with mediation. One of the things we have been very involved in through the Ontario Rental Housing Tribunal in Hamilton is taking advantage of mediation to both speed up the process and come up with arrangements that may be more equitable for both parties than a tribunal adjudicator may find on their own.

My fear is that as section 78 is written, the Landlord and Tenant Board must allow the commitments made by landlords and tenants to be binding and upheld. If they were to remove this provision from the act, and then the new act going forward prevented adjudicators from upholding mediated settlements, I feel it would be a great detriment to landlords and tenants working together to come up with solutions that may be more productive than adjudication.

Section 82, tenant issues raised on non-payment applications, is in my opinion unthinkable and impractical. As somebody who has to appear at the tribunal often, if I don't have, in advance, information about what I may need to either defend or promote, I can't be effective, I can't be credible and I cannot be of assistance to the adjudicator. It's impossible for me to defend against allegations that have never before been publicized, documented or brought to my attention. It leaves board adjudicators in another untenable position and without complete evidence, as I may not be able to produce a defence that would be meaningful and credible. Delays and adjournments will result, further bogging down the tribunal, or the Landlord and Tenant Board, as it may be known.

I feel it's important to maintain obligations for each party to file an application as it exists under current legislation and as it has existed in past legislation. If there is a legitimate problem, the tribunal, or the Landlord and Tenant Board, must deal with it and must review it, but it must be made as part of an application. If there are adjustments to fees to make it more affordable for tenants of modest means to do that, then please consider that, but to simply allow a respondent in a financial matter to raise

issues that may not be known to the landlord or to their agent who appears on their behalf would be a terrible step backward.

Section 126 has to do with above guideline increases. I feel that the proposed limit of 3% is not nearly enough to incent the proper reinvestment in multi-family buildings. We're talking about a rental stock that is in general between 30 and 40 years old and in desperate need of reinvestment. Some of the price controls that have been placed on this industry over the years have resulted in a lack of reinvestment. During the Tenant Protection Act, we've seen some of the most significant, substantial and visible actions of reinvestment in those properties, and that has largely been facilitated by the modest recovery of the 4% guideline. I understand that in subsequent years there may be another increase, but to lower that would be a great disincentive to landlords, of all walks of life and throughout the province, to make reinvestments in their properties. The age of the buildings and the cost to reinvest will not be getting less expensive, and I feel that the standard guideline increase, especially if it were to revert to a cost-of-living increase, may not capture the accumulated reinvestment that needs to be placed in these buildings.

Proposals may also act as a forum for tenants to raise other unrelated issues. Again, I encourage tenants, where they have a legitimate complaint with their apartment or with the way their building is being managed, to raise those issues within the framework that already exists.

Section 137 has to do with an energy conservation initiative and the installation of smart meters. As it is written, section 137 is, in my opinion, counterproductive to the goal of encouraging energy conservation. It leaves a number of open-ended risks to the landlord that are great and would act as a deterrent to sub-metering. We know that the province wishes to encourage people to conserve. We also know that the only way to really, and in a meaningful way, encourage somebody to conserve is to give them accountability for their consumption. Currently, the large majority of our apartment stock throughout the province is bulk-metered, and tenants have no accountability whatsoever for their consumption. As a result, we know that people who are abusive of consumption continue to be subsidized by tenants who are responsible and who take care in the way they use their utilities.

If we were to look at improving section 137, there would be a few ways. Number one is to remove the open-ended liability that exists as it is written. It would be to ensure that all costs of electricity consumption, including administrative charges, as they should be, would be borne by the users. Consumers have to understand the accountability that comes from using a commodity.

The 12-month monitoring rule, a delay that is proposed to allow tenants to actually understand what amount their rent may be reduced and to see what their consumption is, is well intentioned, but will serve two purposes: one of them a delay of a year or more, which certainly isn't in keeping with our spirit of incenting conservation immediately and in a meaningful way, and

it may also encourage some people to over-consume during that period of time in order to achieve a greater-than-normalized rent reduction.

I feel, and I've spoken with other members in our industry, that the proposed language for section 137 would be a great disincentive to sub-meter. As a result, I can't believe this would be a productive step forward for anybody.

I also have a general concern of fairness with respect to the language that is used in Bill 109. I feel it reflects a continuing bias of tenants over landlords.

Obviously there's a well-known and publicized lack of availability for legal aid for landlords who may have to appear in a tribunal setting, and who unfortunately are not permitted to speak with the legal aid duty counsel who is on site to assist tenants only. I encourage you to consider the plight of a small, independent landlord who may not have an organization or the knowledge of the act or the tribunal process to be able to defend themselves. To simply offer legal aid to tenants I'm afraid reinforces a long-standing position of bias.

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Furthermore, section 182, providing the right to raise unrelated maintenance issues at financial hearings, is a clear step in the wrong direction, as is section 183, where the board may lose objectivity in whether or not to enforce an eviction.

The Chair: You have one minute left.

Mr. Horwood: Thank you.

I feel that if in any way language was used that would have favoured the landlord, it would be an outrage. I recognize that this is not to improve the landlord's standing against that of the tenant but to raise the equality issue and to ensure that both parties—landlords and tenants—have the opportunity to work in a balanced environment.

What we heard just a few minutes ago was a very, very difficult story, and unfortunately not that uncommon at all. I feel that there's clearly an affordability issue. We know that there are thousands and thousands of empty apartments ready to be occupied, that there are waiting lists at the moment that are not being satisfied by these empty apartments. We clearly have an affordability issue, not a shortage of units. We need to house people in existing units, and I encourage you to find other ways to help these people who desperately do need your help. I'm a landlord in Hamilton. I live in the same neighbourhood, I shop in the same grocery stores as my tenants. We're neighbours, and I'm proud to be in this business, but I do feel that the steps you're taking with this proposed language may end up moving in the wrong direction and will help neither landlords and certainly not tenants.

The Chair: Thank you for being here today.

FEDERATION OF RENTAL-HOUSING PROVIDERS OF ONTARIO

The Chair: Our next delegation is the Federation of Rental-housing Providers of Ontario. Good afternoon. As you settle yourself in, if you need water, please help

yourself. If you could identify yourself and the group that you speak for. You'll have 10 minutes, and when you get close, I'll give you the one-minute warning.

Mr. Vince Brescia: Thank you, Chair, and thank you, committee, for having me today. I know our time here is short, so I'm going to be as quick as I can and to the point.

My name is Vince Brescia. I'm the president of the Federation of Rental-housing Providers of Ontario. We're essentially an industry association for landlords, large and small, across all corners of the province. Our time is very short, and I'm under no illusions that we can discuss in a meaningful fashion some of the issues that we have with the legislation. It appears to us that the legislation is set to proceed, so I'm not going to bore you with what you might perceive as platitudes, our long-standing concerns about the legislation in this province. I'm going to try to focus in on some key concerns that we have with this bill.

I've distributed a few things to give you background about the eviction process, how it works; our long-standing slide presentation on why we don't think there's even a need for reform and how things have worked quite well compared to previous legislative regimes in this province; a little overview of the non-payment process and the time frames and a little context for it for you as you deliberate these matters; and finally our detailed comments on the bill, which we hope you as a committee will consider as you consider amendments to the legislation.

I'm going to highlight only a couple of things in the bill, but I don't want you to think there are only two or three things that we're concerned about; it's just the short time that we have here.

Our first concern is general. It relates to a couple of provisions in the bill. We think overall—and I don't think it's intentional, but what's going to happen as a result of this legislation is that the tribunal, or the new Landlord and Tenant Board, as it is going to be called, is going to collapse. We want to be on record as saying that. We're hopeful that amendments can be brought in that make sure that doesn't happen. We certainly hope you'll consider it, because there are a few things that are happening. One is that we're now going to force everything into a hearing—that's the first thing you're doing—whether or not the tenant wants it. As one of your earlier deputants said, we think you might want to consider making sure that the tenant actually wants a hearing before you force one. You're trying to address a concern—a perceived concern, as we see it—that tenants aren't having their rights met or the ability to participate. You just need to find a way to ask them directly if they want a hearing, because our experience in many of the cases under the old system, as was said, they don't show up to a hearing, or they actually don't even want one, if you ask them. So you might want to consider lessening the workload.

Our second concern is around section 82, which is going to allow tenants to raise any matter in a hearing and have it heard, as though they had made a separate

application. We think just this one change alone—when you add it on to the fact that now everything is supposed to go to a hearing—is going to more than quadruple the hearing workload of the tribunal. It takes a significant amount of time to hear these matters, and we think it will be used primarily as a delay tactic. Our experience is that tenants, when they are in these situations, are looking for delay tactics. This will be one that they use. They'll use it to seek adjournment. We're concerned that a landlord should know the case that they have to face when they go to the tribunal. Some people refer to it as trial by ambush. It's not allowed in small claims court, for example. You should have at least two weeks' notice of the case that you're about to meet. Things should not be raised on the spot. You have no way to respond to them, no way to prove a negative if you're a landlord if the tenant makes allegations that something wasn't fixed.

The amount of time it takes to hear these matters—a non-payment issue is rather straightforward to address, but if you're just going to open it up to these tactics, we think it will get abused. We're very concerned that it is bad tenants who will largely be the winners under this scenario. The government has stated as its intention in bringing in this legislation that they want to bring in legislation that's fair for good tenants and good landlords. We think that it is really bad tenants who will abuse the system in this circumstance. They'll cause the damage themselves and point to it. Very often there's no way to prove the cause of damage, and they'll use it to get an adjournment, which is another delay that the landlord doesn't want—more time lost.

I gave you background on the process and the cost for landlords. We want to retain any tenant who will pay, because it costs us significantly when we lose a tenant. So please consider that. The other concern I wanted to raise with you is something at OPRI's, which existed under the Rent Control Act, the NDP provision that is coming back. We're very concerned that under the NDP provision it was strictly related to municipal work orders when OPRI's were put into effect. We're concerned that in this legislation the board is going to have to make determinations as to when a landlord breaches property standards bylaws, versus trained inspectors who are in the field who are physically inspecting the property, who are visiting the property and making that determination. This provision will allow rents to be frozen based on verbal evidence given at hearings or Polaroids presented at hearings. We don't think it will lead to quality decisions when this happens. We think it's overlap and duplication with municipal standards. It will be up to the landlord when a board makes one of these determinations to decide when they've complied, so the landlord will act on their own and then you'll be back into another counter-application by the tenant.

In contrast, in the municipal world, the work order is not lifted until the municipal inspector lifts the work order. Why have the overlap and duplication? We think if you wanted to use this OPRI provision—as you know, we're against it, you've seen it in all our materials, just the concept—but if you want to do this we think it should

be limited to work orders for those reasons. I wanted to keep my comments brief in case any of you had any questions, so I'll limit my remarks to that. I don't know, Chair, if we have any time left, but I'm happy to answer any questions.

The Chair: You do. You have about a minute for each party, beginning with Mr. Marchese.

Mr. Marchese: Quickly: Do you know any bad landlords?

Mr. Brescia: Do I know any bad landlords? I can't say I know any personally. There are some out there. There are lots of bad tenants and I hear a lot about those from others.

Mr. Marchese: I'm sure there are bad tenants too. Can you describe a bad landlord?

Mr. Brescia: A bad landlord doesn't respond to maintenance concerns in a timely format, doesn't have good customer relations. There are a lot fewer of those under the current system, we find, than under the old system. Bad landlords could thrive under the old system, particularly with constrained revenues, and cutting corners and lineups with the shortages caused by rent controls. Our experience is that strict rent controls caused more of them.

Mr. Marchese: The rate of return over the last 10 years, based on your knowledge and experience—what has it been for apartment owners?

Mr. Brescia: A lot of it's published, because we now have back in the industry some institutional players.

Mr. Marchese: What would that be?

Mr. Brescia: Well, it has fluctuated. It's too low for them to want to brag about it, but it's 6%, in that sort of neighbourhood, 6% to 8%.

Mr. Marchese: That would be good, wouldn't you say?

Mr. Brescia: Not particularly great.

Mr. Marchese: You'd like to do better. It used to be 10%.

Mr. Brescia: Well, it's not. For a risky investment, it's something where you're looking to get more than you can get investing in a bond, so it's not like it's spectacular, no. It's a fairly low and stable rate of return.

The Chair: From the government side, Mr. Duguid.

Mr. Duguid: Mr. Brescia, I want to thank you for the work you've put into this. Like some of the presenters before us, I know you've been involved with us on this issue for over two years now in terms of providing input to us, and feedback and being involved in the consultation process that we were involved in. I want to thank you for your role in that.

1700

Mr. Brescia: We appreciated the chance to have input, thank you.

Mr. Duguid: The comments you made were on the issue of outstanding maintenance and how we provide incentives to landlords to ensure their buildings and units are well-kept. That was an option we had to look at: Do we do it just for property standards orders, where you can get a rent freeze for just property standards orders, or do you do it for serious maintenance issues? Do you not

think that the new Landlord and Tenant Board will be quite capable of determining what a serious maintenance issue is? I think that's really the concern with—

Mr. Brescia: No. I think it's actually going to be a circus of Polaroids. Some people have written about systems like this in New York; William Tucker wrote about what would happen. I think the tribunal, given the amount of time they'll have for some of these hearings and making very serious decisions that will impact on landlords, with municipal inspectors out in the field—they're becoming even more empowered with legislation this committee dealt with earlier today to deal with property standards issues. Municipalities have tremendous power to look after any serious maintenance or health and safety violation. We think that's good enough. There is one system to deal with it and we'd like it confined to that.

We're really concerned about the quality of decisions that are going to come out of the tribunal regarding this matter. They just don't have the expertise and they're not going to be in the field to physically inspect. It's all verbal-evidence-based and hearsay, so we're quite concerned about that. I can appreciate what you're trying to do, though. I understand.

Mr. Hardeman: Thank you for the presentation. A couple of things: First of all, I was impressed with and support the issue of the work orders as they go to the tribunal, to have a third party actually issue the order and also have that available to a tribunal to hear whether it has or hasn't been met. We hear a lot of things about the—this is primarily with bad landlords and bad tenants and this act is to help facilitate that. When I look at your figures, that it costs on average around \$3,000 to the landlord to change tenants if it's against the wishes of the tenant, could you explain why anyone would want to do that just to have another tenant?

Mr. Brescia: There is no landlord who wants to do that, I can tell you that, particularly in current market conditions. It's too much of a loss to walk away from, and a landlord will do anything they can to keep a tenant who is paying. There is no landlord who wants to do that. Unfortunately, there are circumstances where either the tenant can't pay or, in our experience, many cases where the tenant won't pay, and we do need a lever to deal with that situation. Your sense of it is right. We do not want to walk away from—if there's any way, if we can get a payment plan, anything like that, you'll hear from all of our members, we will try and find a way to retain the tenancy. It's not just that \$3,000 that you're walking away from. You're walking away from new advertising costs, new lease costs. There are additional turnover costs with getting a new tenant into the place. So if you can work something out, you will, absolutely.

The Chair: Thank you very much for being here today.

HIGH PARK TENANTS' ASSOCIATION

The Chair: Our next delegation is the High Park Tenants' Association. Welcome. If you could say your

name for Hansard and the organization you speak for, you'll have 10 minutes. I'll give you a one-minute warning if you get close to the end.

Mr. Kristopher Sambrano: My name is Kristopher Sambrano and I represent the High Park Tenants' Association. Thank you for very much for giving me an opportunity to speak on my behalf as well as the tenants of my association. I live here in Toronto, in High Park, and have lived in High Park for the last 14 years. As a matter of fact, I can't imagine living anywhere else. It is my home. I'm a renter. I work full time. I'm also the president of the High Park Tenants' Association, which represents 2,400 units in the High Park area. The HPTA, as we're called, exists because we need to exist to counterbalance the forces of management and landlords, and particularly to weather the perfect storm caused by the Tenant Protection Act.

I applaud you for ushering in new legislation, as do the tenants of my association. Without exaggeration, we would say this new legislation, Bill 109, is met with the same gratitude and appreciation as a drowning man might have for the sudden appearance of a raft—inflated, of course.

To the members of the HPTA and the FMTA, whom we support, the introduction of the previous legislation, the Landlord and Tenant Act, as far as we're concerned, was a shipwreck. It was a shipwreck as far as the tenants were concerned. It left us floundering in an ocean of capital expenditures, fast-tracked evictions and, probably one of the single most devastating aspects of the Landlord and Tenant Act, vacancy decontrol. Imagine our relief when we heard about Bill 109. Make no mistake, this bill saved our lives because we were going down for the third time.

As I said before, it was like a raft. We eagerly climbed aboard and started looking forward to what we have found in this raft. There was fresh water in the way of costs no longer borne. There was fresh food in the way in which the tribunal was to explore further AGIs and, for the first time, to have the power to reject the application if they deemed the repairs to be unnecessary. That's one of the things that our association has been going through for the past few years: unnecessary repairs. As we continue to explore the contents of this raft, we found many positives things, things that gave the tenants sustenance—hope, if you will.

Now I'm going to stop for just a moment, because at this point you might think I'm exaggerating here with the metaphor of the ocean and the raft. But the truth of the matter is, I'm not. Because the tenants' association is so large—remember, 2,400 units—my association works with students, middle- and low-income tenants, seniors, fixed-income tenants, widowers, widows, single parents, new Canadians, old Canadians. I work with them on a daily basis. I help them cross the street to the management office, and I'll tell you more about that office a bit later. Bear with me while I finish my original story.

Without a joke, because we've been out there in the TPA sea, getting tossed around a long time, this new bill

has actually become our salvation. But there was one thing missing, and we looked everywhere for it. We soon realized that, though this raft was timely and it did in fact save us, there was one very important thing missing. Where were the oars? We looked through the masses of pages and the nuances of language, into the give-and-take that this new legislation offered in order that it be fair for everyone, but we could not find the oars. We could not find the thing we need to eventually take us back to the shore. We could not find the end to vacancy decontrol, which means this raft, this salvation, helps us but doesn't take us any closer to land. In fact, as renters, we're out there in the water and we are looking for a place to call home.

Some of you might ask, what is the effect of vacancy decontrol? To the young people, the five or six students who have to cram into a two-bedroom apartment, who come to me and ask why the rents are so high, I can only tell them of a time when the rents were better regulated, a time when someone left an apartment and the landlord could only raise the rent by a certain guideline, which kept the apartment affordable.

Out in High Park, when I talk about affordable housing, even though I'm young I feel like an old-timer talking about when the buffalo used to run rampant through the prairies of Ontario. You see, the truth of the matter is, High Park is a very popular place to live, and the rents continue to go higher and higher. There is no limit there to prevent the landlords from charging whatever they like. If you've been out there, it's perfect; it's desirable for friends, for family, for business, and when people move out, they often move out because they can't afford the rent anymore. The people who move in are not the everyday people. The people like me—the average, everyday guy—are the people who are moving out because we can't afford it anymore.

As I say, I do know lots of people as head of the association. I know a woman who has shared her junior one-bedroom apartment with her son since he was five years old. He's now 15 years old. There're still sharing that junior one-bedroom apartment, but they can't move to another one because another junior one-bedroom apartment in that area is about \$1,400.

1710

First, as long as the—how do I put this? One of the things that often happens is those long-term tenants are singled out in AGIs. She's faced one for two years in a row. So she can't save the money to move out, and she can't move to a larger apartment, because those apartments are out of her price range. And as market rents drive the price of that one-bedroom apartment up, every day it becomes farther and farther from her reach. So in short, the landlord's ability and the right to charge whatever they like for an apartment, once the tenant has left, is completely wrong.

Please keep in mind the forces in place that regulate the market in other places do not apply in my neighbourhood. If you look at the vacancy rate as a whole, the vacancy rate in Rexdale is not the same as in High Park.

It's a totally different landscape. It's a totally different economy. Vacancy decontrol does not work for tenants in my neighbourhood. The landlords charge high rents and selectively and systematically weed out anyone, with the exception of people with a high income. So in this particular case, this woman, like many tenants, is stuck. She's been given a raft but no oars.

Finally, in respect to the AGIs, as everyone knows, above-guideline increases, my landlords do single out the long-term tenants, and when I ask management why, they say the long-term tenants are not paying the market rents. Well, once again, management decides market rent, and they can do so on a whim—on a daily basis, on a monthly basis. The rental market is the only market where long-term tenants are punished for their loyalty to landlords and their loyalty to the communities. I mean, the longer you stay, the more they try and get you out in hopes of flipping the apartment and finding someone who will pay more rent.

Tenants in good standing are unable to move to larger apartments, and they're singled out through AGIs in a deliberate attempt to push their rents so high that that particular tenant who has been there for 20 or 30 years, whose kids have been brought up in that neighbourhood, can't afford it anymore; they have to leave.

Never in my life have I ever seen a landlord standing in line at the food bank, yet I see tenants there. Never in my life have I heard of landlords having to share their junior one-bedroom apartment with their kids, but I've just given you an example.

The Chair: You have a minute left.

Mr. Sambrano: Thank you.

I see these people. I help them. I walk them across the street to help persuade the landlord that these tenants can't afford these AGIs. I walk them across the street optimistically, hoping that I can negotiate some sort of a plan for these people. So basically, my question or what I'd like to say is, am I my brother's keeper? Well, you know what? Today, I am, and the landlords, as far as I'm concerned, have an opportunity to help people. They, too, can be their brother's keeper.

So we're no longer drowning, and we're in a better situation than before, but not by much. Has this legislation saved us? Yes, from eventual catastrophe and devastation, but I feel it has just prolonged the inevitable. We see the sharks; we don't see any land ahead. The Titanic was a wonderful film. It was entertaining. It was an Academy Award-winning film, but this isn't Hollywood. Our plight is serious. We're not getting paid for our performances, because our performances are very real, and when people go down for the third time, they stay down. No amount of special effects is going to change that. Please amend Bill 109. Please end vacancy decontrol. Give us the oars we need to get us back to our homes.

The Chair: Thank you very much. Did you want to provide the committee with your speaking notes? Are they legible? You can always submit them later.

Mr. Sambrano: I can send them in at a later date.

The Chair: If you want to, you can.

Mr. Sambrano: Okay. I think that would be wonderful.

The Chair: Just that opportunity. It was a very interesting deputation.

Mr. Sambrano: Thank you very much.

The Chair: Thank you.

BOARDWALK RENTAL COMMUNITIES

The Chair: Our next delegation is the Boardwalk Rental Communities. Welcome. As you get yourself settled, if you could introduce yourself and the organization that you speak for. After you've done that, you'll have 10 minutes. If you get close to the one-minute mark, I'll give you a little nod and let you know that you have a minute left.

Ms. Kim O'Brien: Thank you. My name is Kim O'Brien. I represent Boardwalk Rental Communities. First of all, I'd like to thank you all for affording me the opportunity to speak in front of you today.

Boardwalk Rental Communities is Canada's largest owner and operator of multi-family apartment units. We are across five provinces in Canada. We have over 33,000 units, 4,300 of which are here in Ontario.

Over our 20-year history, we have fought that typical portrayal of the bad landlord that's so often the case in society. For the first couple of minutes, I'd like to give you some background on our organization and really give you an idea of what we strive to do each and every day.

Our mission as an organization is to serve and provide our residents with quality rental communities. The focal point of our portfolio is the quality of our portfolio. Over the last five years, we've invested over \$350 million back into our portfolio, \$50 million of it here in our properties in Ontario. While we don't have anything directly in Toronto, our portfolio is located in London, Windsor and Kitchener.

Customer service, each and every day, is at the core of what we do. We're very proud that we have a 24-hour call centre—24 hours a day, seven days a week, 365 days a year—where customers can phone in at any hour of the day. If they can't get through to their local customer service agent on their site, they can talk to one of our call centre agents, who can dispatch if it's a maintenance person that they need to come out, or whatever type of emergency may be happening in their unit at any particular time.

On the site level, we have associates who are dedicated to customer service, associates who are dedicated to maintenance, associates who are dedicated to cleaning and associates who are dedicated to landscaping. So each and every day, we reinforce our commitment to provide our residents and our customers with the best product that we possibly can.

We understand, though, that our product is a very sensitive one: people's homes. That's not something that we take lightly. We are very proud that we have in our organization a gentleman who serves as a director of

community development. His focus is to work with numerous organizations across the country to be able to come up with different initiatives and projects where we can use our resource, our rental units, to work with organizations, be they those that support disabled people or homeless foundations across Canada, to make sure that we're coming up with all kinds of initiatives to provide housing to all areas of society.

We don't typically support building of new affordable subsidized housing. We feel that that money is better suited working with us and different levels of governmental organizations to provide subsidized units where individuals with different economic or health hardships, are able to incorporate and live daily in an environment with everyday human beings who are functioning members of society—going to work, going to school etc. We have given up units in our buildings over the years; there's an example in London where we have one unit that we give free of rent to an organization that helps place disabled people back into the community.

Each and every day, as I say, we take this commitment very, very seriously. We're not just in it for the almighty dollar, although we have unit holders, and their interests are important to us as well, but all of our stakeholders are equally so.

One thing that I really would like tell you a little bit about is our own internal subsidy program. This is nothing that's mandated by anybody. For any of our residents who have been with us and are good-standing residents, if they can prove that they can't afford a rental increase, we will waive it. We receive many phone calls if there are rental increases being issued, and we spend time with each and every one of those customers to understand what their financial position is and to be able to come up with a means to facilitate them staying with us. Customer retention is key to us.

For the provinces that we're in where there's no control on how much a rental increase is—for example, in Alberta, you can increase twice a year, and it doesn't matter the amount—we limit the amount that we increase. We take that obligation on ourselves, and as much as there could be potential for \$200 and \$300 rental increases at a time, we will not raise any existing customer by \$50 at a time. That's just our own internal policy.

We just want to make sure everybody understands that it's not all big, bad landlords out there, that there are groups that really take the responsibility of the product they provide seriously as well.

1720

With regard to the proposed bill, as much as we see some problems throughout it, the one area that we'd like to concentrate on is section 82 and to reiterate some of the comments that Mr. Brescia made earlier in his talk with you. What concerns us most is that we find it to be very biased and, as a party who each and every day provides a standard level of product—and I'd invite you to tour some of our properties; we're very proud of our brand across Canada. We commit to providing that each

and every day, and when our customer reneges on their commitment and decides not to pay their rent, their ability to present us with allegations that we're not aware of we see as justly unfair.

We welcome the opportunity for customers to speak to any concerns that they have over the quality of their product. Certainly, to add to your point, yes, there are a lot of bad landlords out there, and we fully advocate for a customer's right to be able to bring these issues forward. But for the ones who each and every day are striving to provide a product that the customers can be proud to call their home, we see this as justly unfair, as I said.

We're concerned about the abuse that could take place as people see this as a delay tactic to really not have to pay their rent at all. For us, as we see it, we would have to come, understand what the allegation is, and then cause an adjournment. I challenge any good-paying, good customer: Who sees the benefit in that? They are struggling each and every day to work, just like everybody else, and they pay their rent on time, they're never late, and to see the possibility of their neighbour across the hall, who could very well be insinuating allegations that are not true just to delay paying their rent, doesn't work for anybody.

So we're really concerned that there could be damage done to our units just as a reaction to any of these—if we were to file a non-payment charge, we are concerned that our units could see unnecessary damage as people try to come up with allegations or pictorial evidence that there is damage in the units.

Our other concern is, just as we said, the delay in the system. We think that the system has lots of areas where it can provide some really good service, but if we're constantly bogged down, then we just don't see who's going to win.

So ultimately, we just want to continue to provide a product for the good people who work hard every day and pay their rent on time. And I concur with one of the other gentlemen before: If there is a problem—we've worked with many of our customers over the years—if they can't make it on time this month, then we'll figure something out, because we do understand that the product we're providing is a home.

Overall, we would really like to see section 82 taken out. But if that's not able to happen, then certainly we as the other party would really like to be able to understand before we appear before the board what's been charged against us so we can prepare our case and not delay the process longer so that we have people who are just bringing down the system—the rotten apple who's bringing it down for everybody else—continuing to win and foster potential abuse through this section.

As well, if there are true concerns, there are mechanisms in place where tenants can file that. We're completely fine with that. But if, truly, they're holding back their rent because of some awful, deplorable conditions, then we propose that they're able to pay their rent to the board as an act of good faith, so everybody can understand that there really, truly is a deep concern and people

are not just trying to cause further delay in payment of their rent, their contractual rent that they're obligated to pay.

We have to provide the product, and it's a partnership. That's how we see it. I think it's the same with any with our financial obligations. But sometimes there may be a perception that it's okay not to pay your rent. Quite frankly, we just see our costs going up with people who can delay the system further and further: increases in our admin costs, increases in our legal costs, increases in our bad debt. Ultimately, it's the good people, the good customers, who end up paying for that.

We're also concerned about the potential for people to inflict financial hardship even on themselves. They may be tempted, if they're going through a rough time, not to even pay the rent because they understand that there could be further long delays, never having to be evicted. We would just hate to see that happen to individuals. As I said, these are our concerns with this one particular section.

We, as an organization, look to Ontario as a place where we—

The Chair: I'm sorry, but I failed to tell you that you had a minute left. You have exhausted it, so if you could summarize.

Ms. O'Brien: We look to Ontario as a place where we want to see further investment opportunities. We're open for business here, and we hope Ontario is as well. We've had a great run here, and we look to continue it in the future. Thank you.

The Chair: Thank you very much for being here.

GREATER TORONTO APARTMENT ASSOCIATION

The Chair: Our next delegation is the Greater Toronto Apartment Association. Welcome. I know you know the drill, so I'll let you get started.

Mr. Brad Butt: Yes, I am familiar with the drill. Madam Chair, members of the committee, my name is Brad Butt. I'm the president and CEO of the Greater Toronto Apartment Association. We're very pleased to have this opportunity to speak to you about our concerns with Bill 109.

Our association comprises more than 240 companies that own and operate in excess of 160,000 private rental apartment units across the greater Toronto area. Our members manage apartment properties 24 hours a day, seven days a week. The rental housing industry is like no other—we care for people's homes. We interact with our clients, the tenants, every day. We provide decent, affordable accommodation for millions of residents across the greater Toronto area.

Bill 109, the Residential Tenancies Act, is a piece of legislation that we believe threatens the balance between an apartment building owner's rights and obligations and the rights and obligations of the tenants. The current Tenant Protection Act did attempt to level the playing

field, where this bill, in our view, is completely one-sided.

In the very short time allotted, I would simply like to refer to a couple of sections of the bill that require serious amendment.

First, we recommend that you completely scrap section 82, which would allow for unrelated matters to be presented in a hearing for non-payment of rent. Over 80% of all eviction applications are for non-payment of rent. Nothing has changed in 30 years of different pieces of legislation in that regard. Therefore, the only issue that should be before a member of the new Landlord and Tenant Board is whether or not the rent has been paid and whether it ever will be. Allowing other evidence to be presented that is unrelated, in our view, will simply confuse board members and result in considerable delays.

Second, section 30, which relates to orders prohibiting rent increases due to maintenance, must be limited to only the most serious orders. My experience in particular, in dealing with officials at the city of Toronto, is that these issues get very political, especially when local members of council get involved, rather than ensuring whether or not there is proper and adequate building maintenance. Maintenance issues are ongoing—we know that—especially with the age of the rental housing stock, and landlords should be encouraged and not penalized to invest in maintenance matters.

Third, section 137 on submetering must be eliminated. The rules as they relate to metering make it very expensive and cumbersome to implement. This section actually totally flies in the face of this government's energy conservation initiatives. Submetering, or smart metering, requiring the tenant to take over the meter with a corresponding rent reduction should be simple. The result will be less energy consumed and more savings for tenants. However, the current framework will discourage submetering.

Fourth, section 83 gives the new board the power to refuse or postpone evictions. This essentially takes what is supposed to be an unbiased tribunal and forces it to side with the tenant. No other court or tribunal does this, and neither should the new Landlord and Tenant Board. We recommend to you that this section be eliminated.

Finally, I want to warn committee members about what we see as a huge administrative cost as a result of this bill. Forcing every single application to a hearing, even when a tenant does not dispute the application filed against them, adds significant increased costs and time delays at the proposed Landlord and Tenant Board. At a time when government should be looking for cost savings, this will result in many millions of dollars of new money being required.

1730

Members of the committee, at a time when the rental marketplace has never worked better for tenants, with lowering rents and high vacancy rates, at a time when we are seeing new apartments being built and millions invested in an aging housing stock, why would the government propose such a draconian change that would threaten this environment?

I encourage you to address the sections of the bill that I have detailed and recommend they be changed. Let's ensure that we will continue to have a healthy affordable rental market for everyone. Thank you very much.

The Chair: Wow, you left lots of time. That's great.

Mr. Butt: I thought it was time for the committee members to ask some questions.

The Chair: That's good. It's a good thing to get them to wake up.

Mr. Flynn: I wanted to explore or expand upon your comments on section 137, on submetering. I think you make a very good point that it should be simple. You would think that anyone in the room would agree that a homeowner and a tenant should have some form of equity in their ability to conserve, to reduce their own hydro bills. The rules as you see them in the existing or the proposed legislation, how do you say that that makes what should be a simple task become a difficult task?

Mr. Butt: One of the biggest problems with section 137 is it's requiring a huge, upfront capital cost of installing the meters that are actually going to monitor the electricity consumption in occupied apartments, and then, after all the bills have gone through—and there's been no revenue by the way, back to the landlord to recover those costs—a year later, we're going to determine what the rent reduction may or may not be, whether the unit was occupied or vacant, and now the application process for determining the rent reduction would take place.

What we would suggest—we'd be happy to work with the government in this regard, and maybe we can do it through the regulations—is let's come up with a simple, straightforward formula where a landlord can say, "The meters are going in as of tomorrow. Your rent is getting reduced by \$50 a month, and as of X date, you will take over paying your own electricity directly."

There are lots of studies that would give the government good information as to what average costs are, if it's done on a square-footage basis for units, maybe a one-bedroom, two-bedroom and three-bedroom are treated differently. This is a huge, cumbersome capital cost that just delays a process that I think would help the government meet its energy conservation goals in the multi-residential sector. We just think there something simpler and easier that you can do.

The Chair: Thank you. Mr. Hardeman. Sorry, I forgot to tell members, you've got about a minute and a half.

Mr. Hardeman: I did want to talk about the process of the metering system and the concerns I share with you. After you've had a year of figuring out individual units and how much they use, there's no guarantee that the same user will be in the apartment when it becomes part of the rent. It would seem to me much more applicable to just take the average of the rental units and say, "We're going to meter those and you're going to pay for it. We're going to deduct so much per month per unit off the bill." I think that would likely be more accurate.

The one I really wanted to question you on—your comments about the extra cost in the process that's being

attributed through what is now going to be called the Landlord and Tenant Board. Have you got any estimation of how much cost that would be? Do you have any ideas or suggestions of where that money should come from?

Mr. Butt: Again, I don't have that, but if half the cases right now, let's assume, are not going to hearings, then it would at least double what it's costing the government right now to run the Ontario Rental Housing Tribunal. I suggest to you that it will be far more than double whatever it's costing on an annual basis to run the Ontario Rental Housing Tribunal, because you're forcing every single application, regardless of the grounds for it, whether the tenant disputes or doesn't dispute, you have to force—just like these committee hearings, everybody comes and speaks, there's a cost of doing that if everybody wants to show up.

So there's going to be that cost of forcing every application to go to a hearing. It's going to be a huge administrative cost. You're going to have to hire a ton of bureaucrats, you're going to have to hire a ton more adjudicators at the new Landlord and Tenant Board—I'm not sure what the complement is right now at the current ORHT, but it's going to have to be double or triple, because you'll never be able to deal on a timely basis with all of these hearings, whether or not the two parties show up to the hearing, if you force everything to a hearing. So the costs are going to be huge.

The Chair: Mr. Marchese.

Mr. Marchese: Thank you, Mr. Butt. I do want to agree with you with the issue of submetering. We pointed out in the debates around second reading that 70% of the units are bulk metered, and therefore it's an egregious waste of money to proceed with submetering. I think you might have some effect on them in that regard.

Can I ask, how important is vacancy decontrol to you?

Mr. Butt: Vacancy decontrol is a very important part of the current legislation. It clearly created the very favourable market conditions we have today. It's a very, very important part of the current Tenant Protection Act in providing a fair marketplace in which landlords can compete for business, in which rents are determined on what the market is. A lot of people say that vacancy decontrol is all about rents going up. Well, I've got news for you. Lately, vacancy decontrol is all about rents coming down because the marketplace has levelled out. A unit that turns over at \$1,200 a month now might only re-rent for \$1,000.

Mr. Marchese: So for you, that's a critical issue. And your argument is that all the other issues you've raised might slow down the development of rental apartments.

Mr. Butt: In terms of maintaining the market dynamics, I think the fact that the government has agreed to proceed with no changes to vacancy decontrol is positive. But section 82, which is going to force every single thing to a hearing—

Mr. Marchese: So people will stop building because of that?

Mr. Butt: —I think is a huge mistake in this bill.

The Chair: Thank you very much.

Our next delegation had called and said they couldn't be here, the Rexdale Legal Clinic/North Etobicoke Revitalization Project. Is anybody here for that delegation today? Okay. I'm going to reschedule them for our last day of hearings on June 5.

MINTOURBAN COMMUNITIES INC.

The Chair: Our following deputation is Minto Management Ltd.

Mr. Hardeman: Perhaps I can do this after the meeting, but I was wondering about the rescheduling.

The Chair: They called earlier. Because of the TTC, they said they were going to have difficulties. As I have authority as Chair, I'm rescheduling them for the last day of our hearings at the end.

Mr. Marchese: We have room?

The Chair: Yes, I think we do. I think we can squeeze 10 minutes in.

Mr. Hardeman: But we have other ones who applied who are not going to be heard.

The Chair: Why don't you just trust the Chair for now?

Mr. Marchese: Can we discuss that later?

The Chair: Yes.

Welcome. Thank you very much for being here today. If you'd been listening earlier, you know that you announce yourself and the group you speak for. You'll have 10 minutes. I'll give you a one-minute warning, and hopefully you'll have time left for us to ask questions.

Mr. John Stang: Good afternoon. My name is John Stang. I'm senior vice-president of operations for MintoUrban Communities Inc. Thank you for this opportunity to make this presentation today.

Minto owns and manages approximately 22,000 apartment units, all located in the province of Ontario. We are a family-owned business. We were established 51 years ago. Of the 22,000 rental units in our portfolio, we own approximately 8,000 of them. We manage, on behalf of a number of other large pension funds, the remaining 14,000 units.

With respect to Bill 109, we are glad to see that Bill 109 retains vacancy decontrol. Because of vacancy decontrol, we know tenants today now have more choice in rental accommodation than was the case prior to vacancy decontrol being in place. Minto has been committed to this industry in the past and is committed again. We are currently building rental accommodation in this province. We're building a 143-unit rental building in midtown Toronto. We're also building a town home rental project in the city of Ottawa. We've also committed to an additional \$25 million in capital upgrades to our existing portfolio over the next two years' time. All this is due to the fact that vacancy decontrol is maintained.

I can unequivocally tell you that the three initiatives I've mentioned here would not have gone forward if indeed vacancy decontrol had been abolished. We would not be building this rental building in midtown Toronto,

we would not be building a rental accommodation in Ottawa, and we would certainly not be going ahead and reinvesting an additional \$25 million in upgrades to our existing portfolio.

As mentioned before, we are glad to see the retention of vacancy decontrol. We are very concerned with a number of other issues raised by Bill 109, but today we will focus on section 137, the smart meter issue.

Minto has been one of our industry's leading advocates of energy conservation. We have been acknowledged as such by a number of levels of government. We received the 2005 natural resources conservation award from the federal government. We received a 2005 award of excellence from the city of Toronto, which is part of the Green Toronto Awards initiative. We've received two certificates of recognition from the Ontario Power Authority for our efforts in energy conservation. We have received the 2006 Award of Excellence for their water conservation award for our efforts in water submetering. We have spent over \$15 million over the last number of years in energy conservation measures that have reduced our natural resource consumption.

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On that note, I would like to introduce, to my left, Mr. Andrew Pride. Andrew is also with MintoUrban Communities. Andrew is the vice-president of energy management. He is the one person responsible for driving Minto's efforts in energy conservation. Andrew will speak to you about the smart meter issue.

Mr. Andrew Pride: Thanks, John, and thanks to the committee for having us here. The smart metering issue is a big issue. As the bill is written today, Minto would install zero meters. We do not support the way it's written right now. It's not in anyone's best interest. We are a strong supporter of metering. We've seen that in our new developments. In the 1980s, we invested a lot in individual metering so people paid for their own utility costs. It was quite effective and it's something that we strongly believe in, but in order for this to work the metering system has to be fair for everyone. The way the legislation is written today, it is not fair for everyone.

The government should see a benefit by reducing energy costs and reducing energy consumption across the province, the residents should see a benefit by allowing them to pay only for what they use and not for what their neighbours are using, the landlord should see a benefit by eliminating something they have no control over, and the environment should benefit because we're going to reduce greenhouse gases. That's what we should be focusing on when we have a smart meter policy written into an act. This act just does not provide the benefits, and I'll touch on a few of the reasons I say that.

We believe in promoting energy conservation and the culture of conservation, the same as the province. The act envisions that what we're going to do is install meters and then tell the tenant-resident that, "In 12 months' time we're going to reduce your rent by whatever you use in the next 12 months." In fact, that's not going to promote conservation. It may actually do worse, but it's not going

to promote conservation. We think we need to have an immediate impact by putting in the metering. What we want to do and the way it will be effective is to actually install the metering and say to the resident, "You're going to start paying for your electricity as of now, as of day one." That way, conservation is immediately achieved. Also, we want to see that people who conserve will get a benefit immediately from submetering.

The current wording allows for rent rebates based on an individual user's consumption. We believe that the rent rebate should actually be on the building's energy use for all of the suites together, so a blended average of all the consumptions for all the suites. This way, when a rent reduction is applied, those who are already conserving energy and practising the culture of conservation will see an immediate benefit. Those who are not will have a challenge and they have to bring their energy usage down to the norm, down to the average for that building. I think it's an important element to try and reward those who are actually doing well today. In the current wording, if you're already conserving energy and you're doing what you can, you won't see any benefit from submetering.

Thirdly, under the current wording of the act, a landlord will take on new liabilities. We heard earlier about the 12 months of utility history on a suite-by-suite basis. The wording actually says that a new resident coming in—the landlord has to get a report for 12 months of usage and say, "Here's what the unit resident used before." The culture of conservation doesn't work like that. Everyone uses their own consumption, so why would we produce a report generating how much someone else used before and give it to the resident, a new prospective tenant? It really doesn't make a lot of sense, and it's a lot of money that somebody's spending for no particular reason. What we could do, actually, if you think about it, is give the whole building average—say, "On average, here's how much everyone used"—so people get a scale in terms of what they're using as opposed to what the prior occupant used.

Last, I've got to mention that there's wording in here that adds a new liability to the landlord that says if energy efficiency standards are not met—whatever they might be; they're not currently defined—then the tenant has a right to get a rent abatement or seek other recourse. That's a new liability that we've never had before, even in our submetered buildings today. I'm not sure where the benefit is. If the benefit is to try and instill an idea of getting a better, more energy-efficient unit, market competition will do that. Once you start knowing your building average usage, then the landlord will say, "If I want to compete in the marketplace, I'd better change the refrigerator, I'd better put something decent in. I'd better make sure that the tenant has the ability to know how to control his own energy." Those are ways that will promote it. It won't be by going to make an application and getting a rent rebate.

Those are the things we're looking at. Today, this act does not work well for submetering, yet submetering and

smart metering are so very important to this province. We need to find good wording to make it work.

I hope we've left some time for some questions.

The Chair: You've left just under a minute for each party to ask a question, beginning with Mr. Hardeman.

Mr. Hardeman: Thank you again for the presentation. Your presentation was primarily on energy conservation. When it comes to energy conservation, if you go to individual metering, how do we then encourage the landlord to practise energy conservation? What is their interest in conserving energy? Conversely, if you go to central metering, why would a tenant want to save energy? What's your suggestion on what we could do to make sure that everyone has an interest in conserving?

Mr. Pride: Market competition is a wonderful thing. If a prospective tenant is looking for a new place and one place is \$100 and another place is \$50 for their energy costs, they're going to go to the \$50 one. So we're going to look at our buildings and say, "What's our average use? We're too high. We're not competitive. We'd better change the appliances. We'd better put compact fluorescent light bulbs in all the fixtures. We'd better make sure it's working right." Or we'd better educate and bring an awareness level to our residents to say, "Here are some great ways to try and save." By empowering them with being able to pay their own costs, that's going to work. So the smart metering works well; delivering it right makes a lot of sense, and then we as landlords will wind up sitting there making improvements to the suite to try to reduce consumption.

Mr. Marchese: Mr. Stang, I do agree with you that vacancy decontrol is a big issue. For me, it is the biggest issue of this bill. We disagree on why. We both know what vacancy decontrol means. As soon as someone moves out of a unit, you can charge whatever you think you can get. But you said that because of vacancy decontrol, tenants have more choice. I don't understand that.

Mr. Stang: Because of vacancy decontrol, there is an environment where indeed you do have landlords like us who are actually building rental accommodation. That was not the case before at all, for the last two or three decades. As a result, what happens is that once accommodation becomes available at a certain rental level, we obviously have to compete at that rental level. Tenants will move out of other accommodation into those particular buildings and so on.

Mr. Marchese: Now I understand your argument. Thank you.

Mr. Duguid: I just want to talk a little bit about the energy efficiency aspects. You objected to the provision where a tenant could apply to the board if a landlord is not doing everything they should be doing in terms of energy efficiency. If we're going to go forward with a regime where there is submetering, we certainly have to have something in there to ensure that there's incentive for landlords to provide energy-efficient windows and appliances and the like. Would you not think it would probably be counter-productive for us not to have that provision in there?

Mr. Pride: The provision for energy-efficient appliances and good-quality buildings is going to have a dramatic impact on the electricity costs, no question. I think the market is going to drive that much more than saying it's a legislative issue. For instance, if you had a building with really old refrigerators, the rent reduction is going to compensate for those really old refrigerators. Therefore, it's already done; the resident is already going to see that benefit. To encourage more savings, when the landlord sees that their utility costs are making them uncompetitive in the industry, they're going to be forced to make a change in their appliances so they can reduce that overall consumption. It's a market-driven process, where they're going to say, "I should make sure I reduce the amount of energy used in this suite," rather than forcing a standard and then allowing the tenant to say, "I think I should have paid \$51 instead of \$50. I'm not going to pay my \$850 rent." There's a discrepancy there. Putting that tie-in to rent isn't really there today for individually metered buildings. What we're seeing with individually metered buildings right now is that the majority have energy-efficient appliances, because that's part of the competition.

The Chair: Thank you very much.

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REALSTAR MANAGEMENT

The Chair: Our next delegation is Realstar Management. Welcome. Get yourself settled and make yourself comfortable. Thank you for being here today. We have 10 minutes for you. Once you announce yourself and the organization you speak for, you'll have 10 minutes. I'll give you a one-minute warning if you get close to the end.

Mr. Martin Zegray: Thank you, Madam Chair and members of the committee. I will start off today by providing a brief background on Realstar, and then I will tell you what I like about the proposed act—

The Chair: Can you start with your name and the organization before you begin, please.

Mr. Zegray: My name is Martin Zegray. I'm senior vice-president of Realstar Management.

Due to time limitations today, I will deal with just a few positives and a few negative aspects of the act. In fact, I'll focus on one positive and one negative.

Realstar was started in 1973, approximately 33 years ago. We are a property manager that oversees 25,000 suites across Canada from Victoria to Halifax. Over 16,000 suites are in the province of Ontario. We operate all over the province, from Brockville, Ottawa and Kingston in the east, to St. Catharines, Niagara Falls, Leamington and Windsor in the south, to Thunder Bay in the northwest. Our clients are quite diverse. We manage on behalf of several large public sector pension plans, financial institutions, families and individual investors.

Let me deal with the parts of the act that I like.

I applaud you for retaining vacancy decontrol. Though we believe in a fully market-based system, as exists in

some provinces, we prefer vacancy decontrol over some alternatives that you considered. Vacancy decontrol allows a gradual movement in revenue streams to market. This is important for the pension plans and other investors we represent. They all need an appropriate return to make the investment in capital expenditures to maintain quality housing for the benefit of all of our residents.

The second thing I applaud is retaining the exemption on newly constructed properties. This helps achieve the same positive goal mentioned previously of encouraging new investment. Several of our clients are studying new rental construction and would need this exemption to provide that housing.

There are several problems with the proposed act. Let me start by dealing with smart metering, which has also been covered by other speakers today. Very briefly, I will point out two parts of my background that are of relevance to you. First, I am a mechanical engineer. An engineer deals with a lot of energy matters. Second, among other responsibilities at Realstar, I am in charge of energy conservation. Hence, I am knowledgeable about energy matters.

Reducing energy consumption in Ontario is very admirable and has been a goal of Realstar for several years. It offers economic, environmental and health benefits to all our residents and is consistent with the goals of the current government. As many of you may know, most Ontario buildings have a bulk meter for electricity, which the landlord pays, and electricity is one of the costs covered in the rent that the resident pays. Given that tenants do not pay the direct cost, they have no economic incentive to conserve. We have written letters to our tenants about conservation. In the letters, we have indicated the capital expenditures we are incurring and other actions we are taking regarding reduction in energy consumption and have asked them to work with us on reducing usage. The effect of these requests has not been measurable—in other words, a minimal impact on consumption. On the other hand, studies by the New York State Energy Research Development Authority indicate that consumption of electricity declines 15% to 30% with individual metering, because the resident has a financial incentive to conserve.

The smart metering provisions in the act will prevent landlords from pursuing individual metering and hence conservation. The problems are as follows: First, though the act does not detail the rent reduction at conversion, ministry staff have indicated that the rent reduction to tenants would include the new individual administration and the meter hardware charge. This means that landlords will in effect pay for the cost of the program. The benefits will flow to the tenants and to the government. The tenants will get a rent reduction, plus they will get the financial benefit of lower utility costs when they lower their consumption. The government will benefit by having lower electricity demand in the province.

If that was not bad enough, landlords will also face new electricity conservation obligations detailed in subsection 137(7). Further, problem tenants will, under section 137(8), have a new way to harass and delay land-

lords. Additionally, the landlord must install the individual meters at least 12 months before the conversion and before the calculation of the rent reduction, thereby giving tenants an economic incentive to game the system during the 12-month period. In summary, section 137 should be modified substantially if it is to provide benefit to Ontarians or, alternately, it should be removed from the act.

I have similar comments on section 138, which deals with apportionment of utility costs. If section 138 is improved as I have suggested for section 137, then to help in conservation, it should apply to all buildings, not just those under six units. This would make it consistent with the application of smart metering.

Problem number two: The guideline for rent increase is set at Ontario's CPI. Most of the costs that landlords have—labour, electricity, gas, water, property taxes and capital costs—are rising at well above CPI, some as high as 10 times the CPI, which is the case with natural gas over the last few years. Unfortunately for landlords, we do not buy many goods or services that are declining in price due to being traded in global markets, things such as electronics. We do not import much from China, India or other low-cost locations. These are the items that are keeping CPI low. I notice personally, as you probably do, that many of my personal costs rise faster than the 2% or so recorded for CPI. Hence, the low guideline means landlords will not recover their cost increases, which over time will lead to underinvestment in Ontario housing stock. One solution is to use CPI plus 1% to try to adjust for the above-CPI costs. In previous legislation, a 2% factor was in the guideline formula to adjust for capital costs and rapidly rising operating costs.

The final issue: In reading through the act and talking to our staff and consultants, the belief is that the act as a whole will lead to a slower and more cumbersome process rather than the fair and more streamlined process stakeholders, including the government, would prefer. In that regard, I would ask that you pay attention to the comments provided previously and separately by FRPO.

I thank you for allowing me to present my thoughts to you today.

The Chair: Thank you. You left about a minute for each party to ask a question, beginning with Mr. Marchese.

Mr. Marchese: Is it fair to say that a whole lot of tenants move every year?

Mr. Zegray: Yes, it would be approximately 25% of tenants each year.

Mr. Marchese: Is it also fair to say that you take advantage of that by increasing rents to a lot of those tenants because of vacancy decontrol?

Mr. Zegray: I would say that in the last four years there have been negligible increases. If you look at CMHC numbers, and certainly our own numbers as well, you'll see that the average change when a tenant has turned over has been less than 1%.

Mr. Marchese: So why is it important to you?

Mr. Zegray: It's important in the long run because it leads to a better market-based economy.

Mr. Marchese: And you're happy the Liberals broke their promise to end vacancy decontrol. Is that correct?

Mr. Zegray: I'm happy that vacancy decontrol remains in this act.

Mr. Duguid: Your comments regarding smart metering seem to be in common with a few of the other landlord presentations made to us today, and I'm trying to figure out where you're all coming from. I haven't had a chance to really chat with anybody specifically about it. Recognize that tenants will have the opportunity, through conservation, to find savings. Recognize as well that conservation is a good thing for the public and the government as a whole. But I'm trying to figure out what the downside for landlords is, and I haven't seen it in the presentations. My understanding as we've gone through this is that the costs of installation would probably be covered by the utilities or providers themselves. But I could be wrong. Tell me if I am.

Mr. Zegray: That will be defined in the rules and regulations. All I've seen to date is the act, and it's unclear how the costs will be borne. Clearly, there's a capital cost, but ultimately someone has to pay for that capital cost, be it the government of Ontario, the resident or the landlord. The utility consumer may fund that cost, but in the end it has to be amortized and paid for by someone else. The question is, who is the appropriate person to bear that cost?

The way I understand it from discussions that have been held by other parties with ministry staff, the expectation is that that cost will be borne by landlords by providing it as a further rent reduction to the resident at the conversion. If that's the case, then the landlord is bearing that cost and the other potential costs: capital costs, conservation costs and costs borne by changes to the rules and regulations as well.

1800

Mr. Hardeman: I guess I'm having a little trouble with where the parliamentary assistant is coming from. It seems quite clear to me that you said that the costs to the landlord would be to install it and the administration. There is nothing in the bill that would include the compensation for the landlord going through that exercise. Is that correct?

Mr. Zegray: That's correct. I believe the way the bill is currently worded, because of that, landlords will not proceed with smart metering.

Mr. Hardeman: Okay. The other part I was a little concerned with in your presentation—

The Chair: It's going to have to be a really short question. There are 20 seconds left.

Mr. Hardeman: —is the issue of the consumer price index increases. It would seem to me that those issues that you spoke to in the presentation are in fact what the consumer price index is made up of. How is it that they are exempt and go up faster than the consumer price index?

Mr. Zegray: They're not exempt from the consumer price index, but they form a much smaller percentage of the consumer price index than they do of actual landlords' costs. For landlords, property taxes are probably

20% of their costs; utilities would be another 20% of their costs. Those are costs that are going up quite rapidly. Because of that, they're under-represented in the CPI.

The Chair: Thank you.

NEIGHBOURHOOD LEGAL SERVICES

The Chair: Our last delegation today is Neighbourhood Legal Services, Toronto. Thank you for being here today.

Mr. Jack de Klerk: Thank you for having me.

The Chair: As you get yourself settled, if you could announce your name and the group that you speak for before you begin. You'll have 10 minutes. I'll try to give you a one-minute warning if you get close to the end.

Mr. de Klerk: Thank you. My name's Jack de Klerk, and I'm the director of legal services at Neighbourhood Legal Services. Neighbourhood Legal Services is a community legal clinic funded by Ontario legal aid. We serve the area on the east side of downtown Toronto: east of Yonge Street, west of the Don River and south of Bloor Street. It's an area that, if you're familiar with the city, has one of the highest proportions of public housing. It probably has the highest levels of shelters and services for homeless people. The social housing component of the community is by far the densest in the city.

Our practice is almost completely restricted to serving tenants who are poor, who are on social assistance of one form or another and who have low incomes; they may be part of the working poor. That's pretty much what we're doing on a day-to-day basis. Obviously, their housing is very critical for their well-being, and they have great difficulty meeting the housing challenges that are thrown their way.

It's from that context that I want to speak to you today. On behalf of many of our clients, we have very serious concerns about several aspects of Bill 109. According to the comments of the minister, Mr. Gerretsen, in the Legislature, he said that he wanted to improve tenant protection by improving the legal processes around evictions. We're concerned that it actually makes the most vulnerable people even more vulnerable.

There are really three issues that I want to bring to your attention today. The first is the purpose of the legislation, the second is the prohibition against considering the Social Housing Reform Act and, finally, lack of a provision for tenants to set aside a default order—that's an order from a hearing that they did not attend.

People have been talking about the legislation throughout the consultations, and we're concerned about the particular importance of these issues to low-income tenants living in subsidized housing, those who have difficulty accessing traditional bureaucracies and those who are disabled or disadvantaged due to their mental health, their physical health or their cultural limitations. Those are obviously the people the legislation should be trying to protect, and we're concerned that in fact it's making it more difficult.

I'm just going to give you one example of how that works. It brings the purpose of the legislation together with the restriction on not considering the Social Housing Reform Act. In section 1, it says the purpose of the legislation is to protect tenants from unlawful rent increases. But if a tenant whose rent is determined under the Social Housing Reform Act has a question about that rent increase, it's too bad, because that's not an issue that can be raised before the landlord and tenant tribunal. So, once again, the most vulnerable people in our community—those who are on social assistance, those who are living in subsidized housing—do not have access to the same justice that other people have.

Our concern with the purpose of the legislation is that it seems to undermine the legal principles that have been established in the past under previous legislation, including the Tenant Protection Act. This legislation is remedial, it's supposed to be working for tenants, to protect people, to keep them in their housing, and we're concerned that because of the language here, that purpose is in fact going to be undermined.

The Social Housing Reform Act determines how much rent people who live in subsidized housing will pay and what subsidies they're going to be eligible for. The legislation, in section 203, specifically prohibits the board from considering challenges to rent determinations made under the SHRA. In other words, if a social housing landlord makes an arrears application to the board, the board has to accept what the landlord says the rent is. This is the equivalent, I would suggest, of a judge in a criminal proceeding having to accept, by law, the version of the facts given by the police. There is no opportunity for the tenants to say, "I'm sorry, they say that's what my rent is, but it shouldn't be that high."

Although the Social Housing Reform Act includes a process by which rents and subsidies are determined for individual tenants, that process is not transparent and does not have any legal safeguards. In many cases to date, our experience is that the denial of subsidies has been arbitrary or, at times, in our view, contrary to a person's rights under the Human Rights Code. Many of us have been pressing the Ontario Rental Housing Tribunal to consider these issues when they are relevant to an eviction application it is considering. There are presently several cases we're aware of in which this issue is on appeal before the Divisional Court.

Social housing landlords are mandated to provide housing to low-income people. Of course, these same people are amongst the most vulnerable in our communities. Many of them, in addition to their poverty, are further disadvantaged by race, disability, especially mental illness, cultural experience and/or language. The process under the SHRA, especially given the possible consequence of the loss of housing, is unfair and inappropriate for them. Those making decisions are not trained to consider these issues of due process or procedural fairness, nor are they required to consider them. Opportunities for representation are virtually non-existent, hearings do not take place, and there is no right of appeal.

When a landlord, including a landlord that is subject to the Social Housing Reform Act, applies to evict a tenant for arrears of rent, the person making the decision—the Landlord and Tenant Board—must come to the conclusion that there is rent legally owing. It is therefore essential, if the tenant is to have a fair hearing, that any issue that raises legitimate challenges to the landlord's claim for rent be thoroughly considered by the decision-maker. The decision-maker must be satisfied that the tenant's rent has been determined according to law, including issues of accommodation under the Human Rights Code, failing which, I trust you would agree, the tenant should not be evicted.

Finally, I want to explain our concerns with respect to the lack of set-aside provisions in the Residential Tenancies Act. In eliminating the default eviction process, the government has recognized the importance of ensuring that a tenant should not be evicted without first having a hearing before the Landlord and Tenant Board. I believe that this is a significant change and that the government should be commended for eliminating the default eviction process that has been the backbone of the Tenant Protection Act and the Ontario Rental Housing Tribunal. The Residential Tenancies Act is short-sighted, however, in that it does not provide a mechanism to set aside an order at a hearing at which the tenant failed to attend. It is a serious failing of the new legislation to not anticipate that there will be legitimate and important circumstances that will result in a tenant not attending the hearing. Situations such as illness or when a tenant is on vacation or when a tenant has not been served by the landlord with the requisite hearing documents are

perhaps the most obvious reasons why a tenant will not attend at the board for his or her hearing.

The Chair: You have one minute left.

Mr. de Klerk: There are also innumerable other circumstances, including mental illness or lack of understanding of the process, which may cause a tenant not to attend their hearing or even contact the board beforehand to let them know they won't be present. In such situations where a tenant's non-attendance at the hearing is not an abandonment of their interests, the Residential Tenancies Act contains no provision to allow the tenant to apply to the board to set aside the order made in their absence. In all other tribunals in the province, not to mention the courts, there is some process to set aside an order that's made in their absence, provided the tenant can show good cause or explanation for their non-attendance at the hearing. A set-aside process is fundamental to a tenant's access to justice. As presently drafted, there's no provision in the Residential Tenancies Act for that sort of thing.

In closing, I would urge the committee to press for changes that would address the concerns I have raised. Thank you for your attention. I'd be pleased to answer any questions.

The Chair: I'm sorry, we've exhausted our time, but thank you very much. We have your presentation. We appreciate your being here today.

I'd like to thank all of our witnesses, the members and the committee staff for their participation in the hearings. The committee now stands adjourned until 4 p.m. on Wednesday, May 31, 2006.

The committee adjourned at 1811.

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Ministry of Municipal Affairs and Housing

Ms. Janet Hope, director, municipal finance branch,
Ministry of Municipal Affairs and Housing

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**Standing committee on
general government**

Residential Tenancies Act, 2006

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affaires gouvernementales**

Loi de 2006 sur la location
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 31 May 2006

Mercredi 31 mai 2006

The committee met at 1601 in room 151.

RESIDENTIAL TENANCIES ACT, 2006

LOI DE 2006 SUR LA LOCATION
À USAGE D'HABITATION

Consideration of Bill 109, An Act to revise the law governing residential tenancies / Projet de loi 109, Loi révisant le droit régissant la location à usage d'habitation.

ONTARIO NON-PROFIT
HOUSING ASSOCIATION

The Chair (Mrs. Linda Jeffrey): Good afternoon. The standing committee on general government is called to order. We're here today to continue public hearings on Bill 109. I'd like to welcome our witnesses and tell you you'll have 10 minutes once you come up to the podium. Our first group is the Ontario Non-Profit Housing Association. Get yourselves seated comfortably. If you need to pour yourself a glass of water, please do. If you're all going to speak, I'm going to need you to identify yourselves for Hansard, and the group that you speak for. Once you begin, you'll have 10 minutes. If you use up that time, there won't be an opportunity for us to ask questions, but I'll give you a one-minute warning.

Mr. Sharad Kerur: Thank you, Madam Chair, and good afternoon, ladies and gentlemen. My name is Sharad Kerur. I'm the executive director of the Ontario Non-Profit Housing Association. Joining me here today, on my left-hand side, is Hugh Lawson, who is the vice-president of our association and director of corporate planning and performance for the Toronto Community Housing Corp. Also with me, on my right side, is Mr. Charles Dowdall, who is the manager of local networks and management support for our association, who is here to assist us with any questions the committee may have.

At the outset, we'd like to thank you on behalf of the 760 non-profit housing corporations that make up the Ontario Non-Profit Housing Association for giving us the opportunity to present our members' views to you here today.

The members of ONPHA provide affordable housing for families, seniors, persons with disabilities, the formerly homeless, those who are considered hard to house and those who suffer from mental health and addiction issues.

ONPHA's members account for more than 10% of all landlord-tenant relationships in Ontario, including many of the most challenging tenancy situations in the province. As social housing landlords, our members are committed to keeping people in housing they can afford, and we appreciate the difficult balancing act of any new law governing landlord-tenant relationships in Ontario.

Two years ago, when consultations were being undertaken on reform of the current Tenant Protection Act, ONPHA made a series of recommendations, requesting greater recognition for the unique nature of non-profit housing landlords from their private sector counterparts. We were pleased to see that the legislation does provide this distinction, particularly section 203 of the proposed legislation, which clearly states that the Landlord and Tenant Board has no jurisdiction in the area of rent-gear-to-income calculations and decisions regarding the withdrawal of subsidies and/or assistance for all non-profit housing providers.

There are, however, areas of the proposed legislation that, if enacted, will severely impose negative consequences for both the tenants and non-profit housing providers and will run counter to the government's intention of creating a more transparent and accountable process for landlord-tenant relations.

We are tabling with you here today a paper with a series of 18 recommendations that we hope the government will seriously consider before Bill 109 is enacted. But given the limited time we have here today, we will focus on only four key areas. I will ask Mr. Hugh Lawson, our vice-president, to talk to you about those four key areas.

Mr. Hugh Lawson: Thank you, and good afternoon. The first area I wish to address is the need for a default process. Under the Residential Tenancies Act, the province is proposing a major change to require all eviction applications to have a hearing. In non-profit housing, providers work very closely with tenants and generally file applications to evict only when all other means of resolving disputes have been exhausted. We agree that the process moved too quickly under the prior TPA by giving tenants only five days to dispute an application to evict. Legitimate eviction applications, however, should be allowed to proceed in a timely and efficient fashion. We therefore propose that the default mechanism be permitted to continue and that tenants be given 20 days to dispute an application to evict.

Second, section 82 of the RTA provides tenants with the opportunity to raise other issues at a hearing of an application by the landlord to terminate tenancy. This has the potential to cause very serious and substantial delays in resolving applications, particularly in smaller cities and rural areas, where it already takes many weeks to schedule a hearing. While ONPHA does not deny a tenant's ability to raise additional matters, we strongly urge the government to amend this section of the legislation to require that the tenant must raise any other potential issues in a separate application at least 10 days in advance of the hearing so that the housing provider has an opportunity to prepare for the issues in advance of the hearing. If there is no advance requirement for the parties to know the case, they will not have the opportunity to prepare for the issues, and this will result in a significant number of adjournments and delays in the making of orders. With just one adjournment due to the tenant raising a new issue, it could take three to four months to resolve an application in the already-underserved areas in Ontario.

Third, the RTA should be amended to make it very clear that any decision regarding a tenant's circumstances should not be impacted because the landlord is a non-profit housing provider. Additional training should be provided for adjudicators on this matter. Many of our members have concerns that they have sometimes been labelled by the adjudicators as the housing providers of last resort. While non-profit housing providers do house people whom the private sector has not been able to accommodate, there are issues of safety and security for all tenants in the building. Tenants in non-profit and supportive housing should not have a lesser standard of rights than any other tenant in the province. Everyone should have the same right to reasonable enjoyment, whether as a tenant or a landlord.

Finally, ONPHA requests that the proposed RTA be amended to explicitly make the orders of the Landlord and Tenant Board public. The Social Housing Reform Act, under which non-profit providers must operate, requires that a tenant who owes outstanding amounts to one social housing provider is not eligible to receive a subsidy in another social housing unit. However, without being able to access the information from the tribunal or the Landlord and Tenant Board, it is difficult to fully comply with the legislative requirement under the SHRA.

Although we have highlighted these four areas, the other 14 recommendations that we have made as well are no less important and we hope the government will see its way to incorporate these recommendations into the legislation so that a truly balanced tenant and landlord act, covering both the public and private sectors, can be attained.

Thank you for your time. We'll now answer any questions that you have.

The Chair: You've left about a minute for each party to ask you questions, beginning with Mr. Hardeman.

Mr. Ernie Hardeman (Oxford): I just want to quickly go to the days of notice, the five days that presently

exist when they must say they want a hearing or they would have the eviction by default. Your suggestion is that that go to 20. Previous presenters stated the fact that when a person gets the notice in the five days, they have known for 20-some days prior to that that they haven't paid their rent, if that's the reason for it. So they would not be surprised to see the notice coming. But the real problem they've put forward was that everyone is forced to go that route, as opposed to—if we all agree and consent that we are being evicted for rent, why should we have to go through the hearing process? Why should the whole process have to carry on? Is the 15-day extension that you're proposing better than the present system?

Mr. Lawson: Yes, it is, because many of our tenants have difficulty comprehending clearly the intent. They need advice from either friends, family or legal clinics to assist them. So they need time to get that support.

Mr. Rosario Marchese (Trinity-Spadina): Thank you for the submission. In your recommendation 1, "The RTA should keep the proposed section 203 which clearly states that the proposed act and the forthcoming Landlord and Tenant Board should have no jurisdiction in the area of rent-geared-to-income calculations," I understand why you might want that, but you also know that many of the neighbourhood legal clinics don't support what you have brought here today with this recommendation. They're worried because a lot of the appeals that have gone to the tribunal are based on this, and they're worried that circumstances change in ways that, if they don't have an appeal process, they're stuck with a decision you might make. You might argue, "The decisions we make are thorough and there's due process," and so. But legal clinics are worried. How do you respond to that?

1610

Mr. Lawson: There's a process under the Social Housing Reform Act for appeals; it's called a review. The jurisdiction rests in the Social Housing Reform Act, so it's part—

Mr. Marchese: What about an independent review—is what they speak about—rather than your own review within your own housing powers?

Mr. Lawson: The government would have to consider that under the SHRA, if they were going to consider that. I think it's a problem mixing the two pieces of legislation.

Mr. Brad Duguid (Scarborough Centre): Actually, I'd like to expand on that area a little bit. You didn't look like you were happy with my saying that, but that's okay.

It is two different pieces of legislation. From our perspective, at this point in time, the Social Housing Reform Act appears to be the one that more adequately deals with the special relationship between a non-profit housing provider and a tenant. Could you maybe explain why you feel it's important that this type of housing be governed under the Social Housing Reform Act?

Mr. Lawson: It is governed under the Social Housing Reform Act. The rules there deal with the calculation of rent and so on, and they're rules that are followed by housing providers. It's hard to have another piece of

legislation say, “We’re going to change our mind on the set of rules under that one.” If you were a housing provider, you would have great trouble figuring out which set of rules applied in the circumstances. It’s much easier having it just under the SHRA. It’s just easier that way for us.

Mr. Duguid: Okay. Thank you.

The Chair: Thank you very much gentlemen.

ETOBICOKE-LAKESHORE HOUSING TASK FORCE

The Chair: Our next delegation is the Etobicoke-Lakeshore Housing Task Force. Welcome. Thank you for being here today. If you could announce your name and the organization you speak for, for Hansard. When you begin, you’ll have 10 minutes.

Interruption.

Mr. Marchese: You might want to speak up.

The Chair: Somebody at the back said they couldn’t hear? I am miked. I don’t want to be yelling at people.

If you could state the organization you speak for and your name. You have 10 minutes, okay?

Ms. Toni Panzuto: Good afternoon, everyone. My name is Toni Panzuto. I’m the chairperson of the Etobicoke-Lakeshore Housing Task Force.

The Etobicoke-Lakeshore Housing Task Force is a community group that, since 1999, has advocated for affordable housing and tenants’ rights in south Etobicoke. We thank you for the opportunity to speak to your committee on this very important bill.

Fifty per cent of the people in our community live in tenant households. Half of those households struggle to pay their rent and put food on the table every month. These people need more than protection from unlawful rent increases and unlawful evictions; they need a system of tenant protection that truly recognizes their right to housing. This means rent control that works and protection from the threat—whether that threat is due to short-term economic hardship or development pressure.

In our community, affordable rental housing is located next to luxury condominiums on prime lakefront land. This adds constant pressure to demolish and redevelop tenants’ homes to the other uncertainties they face.

Unfortunately, Bill 109 falls short in many of these areas. It is a major disappointment that this government has failed to honour its campaign promise to end vacancy decontrol where the vacancy rate is below 3%. Tenants are dealt another blow to their security through the continuation of a complicated and unfair system of above-guideline rent increases.

These issues have been, and will be, addressed by other speakers. We particularly endorse the submissions by ACTO and FMTA. However, we would like to address four areas that need improvement in order that injustices that we see in our community can be remedied.

(1) Spouses and children are not unauthorized occupants. Bill 109, like the Tenant Protection Act, provides no protection for a spouse or family member who resides

with the tenant after the death of the tenant or breakdown of the relationship. These people could be evicted as “unauthorized occupants” under section 100. This creates a serious injustice for victims of domestic violence, who could be forced into the overburdened shelter system. Even worse, they could be forced to take the abuser back into the home to avoid eviction. In some cases, this could be a death sentence, and it has happened in the past.

Furthermore, families who have suffered the loss of a loved one should not be further traumatized by facing an eviction because that person was the one who was named on the lease. Section 100 should be amended to allow resident family members to choose to remain and take responsibility for the tenant’s obligations.

(2) Demolitions, renovations and conversions should not be allowed without all permits and approvals in place. The city of Toronto has taken steps within its jurisdiction to protect the rental housing in our community. They require approval and permits for activities which would result in the loss of rental housing, and these permits are not given unless the public interest has been satisfied. Clause 73(b)(ii) of the bill would weaken the protection of tenants that city bylaws are seeking to address. If permits cannot be obtained until a unit is vacant, this may be because the municipality is trying to protect the tenancy. It will be very difficult for the board to determine if “all reasonable steps have been taken” to get the permits. No evictions should be granted by the board on these grounds unless all permits have been obtained. We recommend that clause 73(b)(ii) be deleted.

(3) Landlords should not be allowed to rewrite leases to allow extra billing for utilities. Many tenants in our community live in small buildings of six units or fewer. These are often the most affordable units, and the tenants who live in them cannot afford to take on additional costs. Section 138 is a complicated system of allowing landlords to unilaterally force tenants to take on extra costs that are not properly theirs. There is no reason to believe that any energy conservation will result from this change. On the other hand, the opportunities for abuse are great in that tenants have no way of verifying the information that the landlord must provide. This section must be deleted.

(4) Tenants with geared-to-income rents should only be required to pay rents that are lawfully charged. Section 203 requires the Landlord and Tenant Board to accept a landlord’s claim about what the rent is, even if a tenant has clear evidence to the contrary. This does not permit the board to fairly adjudicate any dispute between these parties. Of course the tenant in these disputes is, by definition, economically disadvantaged, and social housing providers are not infallible. There is no appeal route within the social housing system from decisions on rent-geared-to-income assistance, and anyone appointed to the board should have the necessary expertise to review these decisions. Section 203 should be amended to allow the board to review the decision of a service manager, supportive housing provider or lead agency about the amount of a geared-to-income rent where this is an issue in a case before the board.

Tenants were extremely disappointed when the Tenant Protection Act was proclaimed. Thousands of them suffered from unfair rent increases, and record numbers of tenants were evicted. While in opposition and on the campaign trail, the governing party bitterly denounced the evils of this act. However, after three years of consultation and study, we have a warmed-over version of the same law, which in some cases removes rights that were given under the TPA.

The Etobicoke-Lakeshore Housing Task Force expects much better from a government that professes sympathy for the concerns of tenants. At the very minimum, we urge the committee to recommend the changes in the four areas we have outlined. What is really needed is a new system that will recognize that all Ontario tenants have a right to a decent home with an affordable rent.

With this law, you have a chance to take steps toward this goal. By your votes on this bill, all parties will be judged at election time on whether or not they had the courage to make a positive difference in tenants' lives.

Actually I meant to do this prior to—I'll let them introduce themselves.

Mr. Kenneth Hale: My name is Kenneth Hale. I'm the lawyer director of the South Etobicoke Community Legal Services. Our organization is a member of the task force. I'm here to give Toni a little backup if she needs it. But, as you can see, she doesn't necessarily need it.

Ms. Maureen Boulter: My name is Maureen Boulter. I'm a member of the committee also. I'm there as a representative of the board of LAMP; I'm the chair of the board. We are behind everything that Toni says so eloquently.

The Chair: You've left about a minute for each party, beginning with Mr. Marchese.

1620

Mr. Marchese: In second reading debate, I argued that not dealing with vacancy decontrol is a serious problem. It's the biggest disappointment in terms of a government's promise that was made and broken. A lot of people move from year to year. As a result of that, landlords take advantage of it. They like that. They're quite happy. Given the presentation they made on Monday, this is one of the best things that the government could have done. In my view, it's the worst thing that the government did not address. You addressed other areas of concern, but is vacancy decontrol equally as big for you in terms of what needs to be changed in this bill?

Ms. Panzuto: Yes, it is. Actually, I'll let Ken answer that.

Mr. Marchese: Yes, please.

The Chair: You have about 15 seconds to answer this.

Mr. Hale: It's a very strong concern. It undermines a lot of the other protections. It gives an economic incentive for evictions. We know that a lot of other people have addressed it. We thought that we should address some of the more minor, hidden concerns, but it is a very strong concern.

Mr. Duguid: I'll be as quick as I can. We're seriously looking at a couple of the concerns you've raised here. Spouses and children not being authorized occupants comes under the definition of a tenant, and we are seriously looking at that. The vehicle that we'll probably use would be regulations, because it's a complicated issue that may require some change as we go forward. We've seen in New York City and others where that's been a problem, so we want to make sure that we're able to tackle that. In all likelihood, we'll do that through the regulations.

Demolitions and conversions: We are giving, through the City of Toronto Act, the ability of the city to have full authority on those, so tenants will certainly be protected with regard to that.

You talked about this as not being a big change from the previous act, and—

The Chair: Mr. Duguid, you have 10 seconds.

Mr. Duguid:—nothing could further from the truth, frankly. You've looked at the eviction process changes, you've looked at the changes to the rates, you've looked at the AGIs—

The Chair: Thank you, Mr. Duguid. Ms. MacLeod?

Ms. Lisa MacLeod (Nepean-Carleton): In your words, you suggest that in some cases this act "removes rights that were given under the TPA." I'd like some examples, if you wouldn't mind providing us with some. And thank you very much for your great presentation.

Ms. Panzuto: Ken will answer that.

Mr. Hale: For example, tenants' rights to privacy: Under the present law, there's no right for landlords to come in just to snoop around or do an inspection; under the proposed law, that right is granted to the landlord, to come in and snoop around if they give 24 hours' notice.

Demolitions and conversions: An eviction cannot be granted under the present law unless the landlord has in his hand a permit; the government is proposing that if all reasonable steps have been taken to get the permit, if they don't have the permit, the board can still allow the eviction.

The Chair: Thank you very much. That's the end of our time; I'm sorry.

LAMP COMMUNITY HEALTH CENTRE

The Chair: Our next delegation is the LAMP Community Health Centre. Not much changed, but I did notice one insertion. Welcome. As you can see, our time is tight today. We welcome you here. You have 10 minutes. Should you leave time at the end, we'll be able to ask lengthier questions. If you don't, we'll have to be short.

Ms. Helen Armstrong: Thank you for giving us a chance to speak to your committee today.

LAMP Community Health Centre has been operating in south Etobicoke for almost 30 years.

The Chair: Could you identify yourself before you begin?

Ms. Armstrong: I'm sorry. My name is Helen Armstrong. I'm a staff person at LAMP.

We work actively on the social determinants of health, including the right of all people to decent, affordable housing. Without such housing, people's mental and physical health can and does deteriorate.

LAMP's board of directors was compelled to make action on affordable housing an agency priority over five years ago. After the introduction of the Tenant Protection Act, there was a significant increase in rental evictions in our community. That act continues to provoke record numbers of rental evictions. We are concerned that Bill 109 does not remedy the worst aspects of the TPA, but only offers a few improvements. In some cases, Bill 109 shockingly will worsen the situation for tenants, as Mr. Hale just outlined.

The Lakeshore Housing Needs Study of 2002 reports that tenants are facing record eviction levels. Many Lakeshore tenants continue to struggle every month to pay their rent and buy food, and that includes families with small children. We see these people daily at LAMP in our housing help centre.

We agree with all the recommendations proposed by tenant advocates, including the Advocacy Centre for Tenants Ontario and the Federation of Metro Tenants' Associations and, of course, the previous presentation.

Our brief will focus on four main points.

(1) Vacancy decontrol must end: We are very disappointed that, despite repeated promises to end vacancy decontrol when the vacancy rate declines, Bill 109 continues this discredited policy. There is no guarantee that a high vacancy rate will continue in Ontario in the next five to 10 years. Landlords' own research reveals that vacancy rates will decline due to strong immigration and a widening gap between renting and owning. This will result in landlords being more able to raise rents to unfair levels and will encourage them to evict long-term tenants. We must have a strong law that prevents landlords from charging whatever rent they want on newly vacant units.

(2) All tenants deserve privacy: Under paragraph 27(1)4, landlords are given a new right to enter a rental unit to carry out an inspection at any time on a mere 24 hours' notice. No homeowner would accept such a limitation on their privacy by their mortgagee or insurer. Giving this right to landlords provides a licence to intrude on tenants and potentially harass them. Where work needs to be done on a unit, the right of entry makes sense. Where a landlord has other unjust motives, tenant privacy should and must prevail. This paragraph should be deleted.

(3) All tenants deserve a notice period prior to an eviction: In cases where undue damage is alleged, landlords are now able to give 10 days' notice of an eviction. This is a ridiculously short period of time to deprive someone of their home. But even this limitation is not respected by the exception in subsection 80(2), which permits the board to grant an eviction order that is earlier than the date specified in the notice. This essentially

means eviction without notice. No law has provided landlords with such powers in the history of landlord-tenant relations in Ontario. While this is intended to apply in only a small number of cases, it can be used widely to intimidate tenants. LAMP is particularly concerned about the large and vulnerable population of people we serve who have mental health issues and other disabilities. This fast-track eviction does not acknowledge the time that may be needed to explore such issues in some of these cases. This section must be deleted. The police and mental health authorities are more than equipped to deal with any emergency situations of these types.

(4) Tenants who are evicted do not deserve to lose their personal belongings: One of the cruellest parts of the Tenant Protection Act was the section that allowed landlords to keep or dispose of a tenant's personal property once 48 hours had elapsed from their eviction. This was rightly denounced by the opposition parties and community groups across the province. Adding an additional 24 hours onto this period does nothing to resolve the meanness of a law that deprives people who have lost their home of the few possessions they might still own. As well, there is no way for a tenant to enforce the obligation that the landlord make the possessions available during the 72-hour period. Evicted tenants should have at least two weeks to remove their property, as they are often homeless and otherwise in crisis.

In conclusion, while there are some improvements in the proposed Residential Tenancies Act, overall this legislation will not result in meaningful improvements in tenants' lives. In some cases, tenants will face new hardships that were, ironically, not part of the much-hated Tenant Protection Act. We urge you to take notice of the recommendations offered by tenants and their advocates and make the requested changes to Bill 109 before it becomes law. LAMP looks to this government for meaningful change that will improve the lives of those who are vulnerable. Thank you.

The Chair: We have just over a minute for each party, beginning with Mr. Duguid.

Mr. Duguid: Thank you for taking the time to join us today and for your deputation. We'll certainly take a look at the four items you've raised. I don't think your requests are major in terms of changes nor were they major issues that were raised all that much during our consultations. Nonetheless, they're issues that have been raised with us, so we'll certainly take a look.

1630

I guess I'm a little surprised that in your deputation you haven't mentioned the changes to the default system for evictions, because I've got to tell you, we went and talked to tenants across this province. That was a major concern. We didn't just tinker with the default system; we've gotten rid of it altogether.

The other area was maintenance. What tenants were asking for in our consultations was to be able to have their rents frozen if landlords are not maintaining their units and if there are serious maintenance deficiencies. We've dealt with that as well, so that's a significant

change. I'm a little surprised that you didn't take notice of that.

As well, the changes to the AGIs: I think, if there was anything that tenants wanted us to do, it was to tighten up the AGIs and provide a cap on the AGIs. We've done that. I know that the tenants and tenant groups I've talked to were very, very pleased with that. Perhaps it was just in the interest of time that you didn't mention these very important items, but I just thought I'd bring it up anyway, because they were sort of—

The Chair: Thank you, Mr. Duguid. Ms. MacLeod.

Ms. MacLeod: Well done. Thank you very much for appearing here. You mentioned twice: "In some cases, Bill 109 shockingly will worsen the situation for tenants." You also mentioned, "In some cases, tenants will face new hardships that were ironically not part of the much-hated Tenant Protection Act." In your view, can you explain that to me?

Ms. Armstrong: I think it was highlighted in some of the areas that I alluded to. Did you have anything else to add to point 3, about tenants deserving a notice period prior to an eviction, for example, and some of the points that were raised by the last speaker—

Ms. MacLeod: I noticed you were writing ferociously there, so I just wanted to know if you had any more input you'd like to provide us.

Ms. Armstrong: Do you want to add anything, Ken or Maureen?

Ms. Panzuto: If we did, we'd need more than 10 minutes for that. That's part of the reason we haven't been able to address everything.

Ms. MacLeod: I'd be happy to take a written submission at any time, in addition.

Ms. Panzuto: Okay. Thanks.

The Chair: Mr. Marchese.

Mr. Marchese: Mr. Duguid likes to preach and doesn't give much time for you to answer. Maybe you can take that whole minute to respond to that, including his comment that the requests that you made are not major, including vacancy decontrol. Please take that minute.

Ms. Armstrong: Thank you, Mr. Marchese. I would like to point out that vacancy decontrol is a huge issue in our community.

Mr. Marchese: You think?

Ms. Armstrong: We are seeing continuing record numbers of evictions. I'm seeing tenants come to our offices daily who can't afford to pay their rent. Food bank use at LAMP has jumped 400% in a three-year period. This is all due to unfair rules around vacancy decontrol—much of it is. We used to be a community that had affordable rents. People were not forced to move frequently because they couldn't pay their rent. I really think that when you were campaigning and when you were in opposition, you said that you would end vacancy decontrol, and you're not doing that.

Mr. Marchese: That was then.

The Chair: Thank you very much for your deposition.

EASTERN ONTARIO LANDLORD ORGANIZATION.

The Chair: Our next delegation is the Eastern Ontario Landlord Organization. This is a video conference. I understand that Mr. John Dickie is here. Welcome to the committee. We thank you for appearing before us today. You'll have 10 minutes once you begin.

Mr. John Dickie: Thank you. It's a pleasure to be here. I hope you can hear me.

The Chair: We can hear you well.

Mr. Dickie: Excellent. You should have a submission which I provided to the clerk just before lunch.

The Chair: Yes, we do.

Mr. Dickie: The Eastern Ontario Landlord Organization consists of the owners and managers of more than 34,000 rental units in Ottawa and eastern Ontario. Our members range from the largest residential landlords in Ottawa to the owners of one or two rental units, as well as many companies that provide services to our industry and to our tenants.

I have four main points to address to you today: first, section 82, the question of joining maintenance claims without notice. Under the current rules—that is, under the TPA—tenants are required to bring their own applications to obtain remedies for maintenance and other claims. That is the way proceedings work in virtually all other judicial or quasi-judicial procedures, and it affords notice to the landlord of the nature of the claim. As soon as section 82 is enacted, however, in any eviction application, a tenant can allege a maintenance problem. That will effectively buy them time, enabling tenants who are in the know to live rent-free for longer periods of time, because in that situation, landlords will either have to request an adjournment of the hearing to bring proper evidence or run the risk of losing a maintenance application because of a lack of evidence. At a minimum, tenants should be required to give notice of their intention to raise maintenance issues at least five days before the hearing.

Our second main area has to do with section 30, orders prohibiting rent increases. It is unusual in today's market, thanks to vacancy decontrol, for there to be much deferred maintenance. Landlords want to maintain their properties well in order to retain their tenants and attract tenants. For those unusual circumstances where landlords fail to provide proper maintenance, the current rules provide ample relief for those tenants. First, they can complain to the city property standards office, and that will produce a site visit by a trained property standards officer, or PSO, who will determine if the defects are real and, if so, issue a work order. In addition to that process, there is a straightforward application to the tribunal, which provides mediation or a hearing, if necessary. In the middle of page 2, the bullet points provide the remedies that the tribunal can order now, without any recourse to an OPRI, an order prohibiting rent increases. Those are five strong remedies that, in our submission,

are fully sufficient to both compensate tenants and ensure that any needed repairs are done.

What is being added here is the ability to prohibit rent increases. Such a power existed under the NDP's Rent Control Act, but it was mitigated by maximum rent. The ability to catch up again to guideline increases does not exist under Bill 109. This section 30 provision for OPRIs is unnecessary and will damage the rental market. It should be deleted. At the least, orders prohibiting rent increases should only be made where there is a municipal work order for a serious issue that the landlord has not complied with.

Looking at the bottom of that page, I've said "subsection 20(1) should be deleted." That's a typo. It should read "subsection 30(1) should be deleted." Failing that, the subparagraphs that I've referred to should be deleted.

Our third main area has to do with above-guideline increase applications. Those applications are typically about catching up landlords who have not taken guideline increases or, very occasionally, landlords whose rents are way behind the norm in the community. Ever since rent control was introduced 30 years ago, this system has recognized that landlords need to be able to increase rents for major cost increases. Over the years, the grounds have been narrowed and narrowed, and now they are restricted to costs which are beyond our control, like unusual utility cost increases or necessary major repairs. This bill takes yet another step in that direction.

Despite those limits, it also gives the board the ability to deny such an application because there are serious maintenance issues. This is counterproductive. If there are in fact serious maintenance issues, and they are normally rare, when they occur it is because the building is distressed, and the AGI is taking place when a landlord has decided to buy the building and turn it around. Or it may be that someone has become ill and let the building fall into disrepair, and then their family is taking the building and putting it back into good repair. Under this remedy, at the very moment when the landlord is in fact fulfilling the maintenance obligations, then they're going to be penalized. It is an *in terrorem* remedy. It is inappropriate and should be removed.

There are other restrictions, such as the restriction to a total rent increase of 9%, that will bite particularly against small landlords, because in a small building with low rents, a major expenditure like a new roof can justify a substantial rent increase. We submit that that limit should be removed.

We've also made a number of comments about the sub-metering provisions. In particular, at the top of page 4, we address the concern that the bill would remove from a tenant's rent more than the cost that the landlord saves. I've given an example at the top of the page. It could be a common enough scenario that hydro costs might have been \$100. Thanks to the smart meter, the energy costs will go down to \$80, so the government saves because energy consumption goes down, but by the same token there is a charge for the cost of the sub-metering and the billing. The landlord is going to be

stuck with that charge, whereas for every other homeowner in Ontario, they need to bear that cost. This is quite counterproductive and we would urge you to either remove or fix section 137.

I'll stop there and take any questions you may have.

1640

The Chair: Thank you. You've left just over a minute for each party to ask questions, beginning with Ms. MacLeod.

Ms. MacLeod: Nice to see you again, John. I haven't seen you since my days at Ottawa city hall. I hope things are well. I look forward to seeing you back in Ottawa in a couple of weeks at the housing conference.

You mentioned about "current market conditions and the current rules in the Tenant Protection Act, deferred maintenance is rare compared to its frequency under the legislation before the Tenant Protection Act." I'm wondering if you could expand upon that.

Mr. Dickie: Vacancy decontrol, the ability to set a new rent, has meant that landlords want to attract tenants. They no longer have, if you like, a guaranteed customer base. We have to go out in the market. We have to attract tenants. So we are making our buildings attractive, we are making sure they are well maintained, we are making sure we provide customer service, and that frankly is the one significant good thing this bill continues, which is very important. However, by the same token, given we have that, we don't want to lose everything else and be put in a poorer position to serve our tenants because of these other rule changes we've identified.

Mr. Marchese: Mr. Dickie, two quick questions: The Liberals broke their promise to end vacancy decontrol. Is that a small issue or is that a really big issue? That's the first question. The second one is, how accommodating are you to tenants who wish to organize a tenant organization?

Mr. Dickie: Tenants have the right to organize under both the current legislation—

Mr. Marchese: Sure. How accommodating are you to that?

Mr. Dickie: Our members respect the law. It can be useful to have a tenants' association in a building because then the comments come back in an organized manner. We have no issue with the way those rights are structured.

With respect to the government's promise, there are issues, but the biggest thing I would point out to you and others is that when that policy was struck, the rental market was extremely tight and we had not yet seen the benefit of vacancy decontrol, which stimulated construction—

Mr. Marchese: But you're really very happy about that, aren't you?

The Chair: Mr. Marchese, thank you very much. You're taking up your person's time.

Mr. Duguid: Mr. Dickie, thank you for taking the time to join us today via technology. My question is about the sub-metering. I'm still trying to get my head around this issue and some of the concerns that have

been raised. I suspect the concerns in terms of additional costs that landlords are talking about are the possibility of administrative costs and installation costs. Is that correct?

Mr. Dickie: Yes, it is.

Mr. Duguid: The installation costs, the capital costs: My understanding is that the service providers would be picking that up. That may not be clear today, but I think that's really the concept, that they would ultimately be picking that up and the costs of that passed through the system. But I suppose the regulations haven't come forward yet from energy on that, and that's something we won't know. I'll get you to verify: Is that your understanding as well, or do you have another understanding of that?

Mr. Dickie: Our understanding is that the costs will be passed through the system in the form of a charge on the bill, so there's a cost the landlord doesn't save because they don't incur it now, and admittedly the tenant isn't paying it now either, but that's the question of having the tenants have the opportunity to save on their energy bill. The tenants can save on the energy bill; they get to pay the cost of the sub-metering. We look at Bill 109 and we think that the way it's set up, tenants are going to get the benefit of the energy saving and the landlords are going to pay the cost of being able to do it. We think that's unfair and that it's inappropriate.

The Chair: Thank you, Mr. Dickie, for being with us today.

Mr. Dickie: Thank you very much for having me.

ONTARIO MANUFACTURED HOUSING ASSOCIATION

The Chair: Our next delegation is the Ontario Manufactured Housing Association. Welcome, and good afternoon. If you're both going to be speaking, tell us who you are, for Hansard, and the organization you speak for. When you begin, you'll have 10 minutes.

Mr. Jim Brothers: My name is Jim Brothers, executive director of the Ontario Manufactured Housing Association. The member of our board who is with me today is Ursula Del Bel Belluz.

I want to thank you for having the opportunity to present comments regarding our unique housing alternative in the province and making comments about the Residential Tenancies Act.

Just a brief summary of what OMHA is: OMHA is a membership consisting primarily of mobile home parks and land-lease communities across Ontario. Some of our members have communities as small as 12 units and some communities are as large as 1,000 homes on one site. Some of our members are manufacturers as well as home builders who lease land to the homeowners.

Manufactured housing and land-lease communities consist of a very vigorous and affordable housing alternative to traditional forms of housing. These communities can be very small, but in most cases they're analogous to a small municipality that supplies its own water and sewer infrastructure, as well as being respon-

sible for miles of roads, sewage systems, sewage plants and water plants, and for the administration and maintenance in the community.

We also have the burden of collecting all the property taxes from the homeowners on behalf of the municipality. That's another task we have. Primarily, the interest on the sites is a leasehold tenure available to the homeowners in the community.

OMHA is concerned about year-round residential communities. We are not concerned whatsoever with campgrounds or seasonal use parks. In all cases, mobile home and land-lease communities are, we feel, about the last-ditch alternative for affordable housing.

OMHA welcomes the opportunity to make comments about the new Residential Tenancies Act, but is really concerned about the lack of awareness about our industry through the government and the bureaucrats in respect to our unique housing nature. Traditionally, mobile home parks and land-lease communities have never fit into the nice square box for apartment legislation. We always seem to have gaping holes that don't seem to fit with vacancy decontrol and annual guideline increases, for example.

We would like to submit our proposals for change, which we have handed to the clerk, and speak briefly today about water and sewer testing charges. Mobile home parks have historically been faced with chronically depressed rents. When the first rent control legislation came in, back in 1975, the average rent in these communities was as low as \$100 a month. With the annual guideline increase applied to the very low rent, the rents have not really increased as much as our operating costs, our exposure and our responsibility. The benefit has gone to the residents and homeowners of the community. With the chronically depressed rents, now they can take extraordinary gains on their housing product, their houses in the community, and the landlord is stuck with the chronically low and depressed rents. We didn't experience the vacancy decontrol like landlords of traditional apartments. We are capped at an annual increase of only \$50.

1650

With the imposition, post-Walkerton, of the water and sewer regulations, the communities have been facing some real challenge with capital expenditures. When you apply for an above-guideline increase with a cap of 3% or 4% on rents around \$200, you just can't get the recovery back to the landlord when you're required to spend \$50,000 or \$100,000, for example, on compliance with a chlorination system for the water.

The big issue that we're facing, although under the TPA in section 115 and now under section 166, is that the legislation allows us to pass on costs for water and sewer testing, although under the legislation we have not got the vehicle to actually collect this amount of money. So landlords in the province have been facing almost a kangaroo court when going to the tribunal to try to collect outstanding water charges. The tribunal feels that they can't issue orders for outstanding water charges and

they kick it over to small claims court. Small claims says, "You know what? That's a residential tenancy matter," and kicks it back to the tribunal. As a matter of fact, in one community they're facing in excess of \$60,000 in outstanding water testing charges. The system is so frustrated with its ability to collect these charges.

Section 166 needs to be amended, and our suggestion is a vehicle for a landlord to go back to the new board with your reasonable water and sewer testing charges and have a declaration order that these charges are reasonable, along with the ability to enforce that if the tenant decides not to pay these reasonable water testing charges. Therefore, for public safety and the protection of the residents and society in the community, we certainly agree with that increased water quality protection. However, water testing charges that have been imposed on us, post-Walkerton, shouldn't be borne on the backs of the landlord.

Those are our comments on the section in regard to water and sewer testing charges.

The Chair: Thank you. Mr. Marchese, you have a minute.

Mr. Marchese: Mr. Brothers, so rent controls have put a damper on your business and, based on the kind of money you're getting from these mobile home tenants, you're not making much money.

Mr. Brothers: No.

Mr. Marchese: How do you stay in business?

Mr. Brothers: We're forced to stay in business because the system really won't let communities close.

Mr. Marchese: But if you're not making any money, why do you stay?

Mr. Brothers: We're trying to provide an affordable housing alternative, but the situation is getting grave in some community cases.

Mr. Marchese: Is there a high turnover of mobile tenants?

Mr. Brothers: Absolutely not.

Mr. Marchese: What is appropriate that they should pay?

Mr. Brothers: We feel that the vacancy decontrol provisions of an increase should go from \$50 to \$100 because the average stay of mobile home tenants in a land-lease community is about seven years. So the chronically depressed rents are staying chronically depressed because we're not getting that turnover.

The Chair: Mr. Duguid.

Mr. Duguid: Mr. Brothers, I appreciate your taking the time to join us. I believe that you were out during the public hearings as well. I appreciate your taking the time to do that.

I've had a chance to look through a lot of your submission here. I guess the area I'm trying to get my head around is the water system. That seems to be the biggest problem. If I could get you just to talk a little bit more about that in the 30 seconds or so that are left, I'd appreciate it.

Mr. Brothers: In a nutshell, the MOE requires landlords of land-lease communities to run a system like

ordinary municipalities. There are water testing charges that have to be paid from the community to third party testing labs. The legislation allows us to pass on those charges, but there's no vehicle to collect those charges from the tenant just like rent. The legislation has gone a little bit beyond only rents, with allowing the tribunal to pass on NSF fees as well as fees for an application. What we're saying is, make the water testing charges part of the total rent that would be outstanding if the tenant doesn't pay, along with, say, municipal taxes if the tenant doesn't pay, so it gives us a vehicle, one place to go, to collect the outstanding charges. We want to make sure the charges are reasonable and are reviewed by the tribunal board.

The Chair: Thank you, Mr. Brothers. Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. You didn't deal very much with the municipal tax issue and the producing of assessed values. I'd just like your comment on how we'd go about doing that, since the taxpayer for municipal purposes is the owner of the land, not the owner of the house, the dwelling on it. How would you propose that it should be MPAC that provides the information to the person living in the house, that not being a roll number on the assessment roll at all? How would you suggest that that be done?

Mr. Brothers: I suggest legislating MPAC to provide the homeowner the regular assessment notice and give them the obligation and right to pay their own property taxes in respect to their home and the site, just like a condominium—

Mr. Hardeman: Except that MPAC doesn't even know who the homeowner is, because the taxpayer—

The Chair: You have five seconds, Mr. Hardeman.

Mr. Hardeman: —is the property roll number, which is the owner of the property. I'm just wondering how we would go about doing that.

The Chair: I'll let you answer that question—short.

Mr. Brothers: I think it has to be some sort of turnover with a registration process for the homeowners, and that would be given to MPAC on the turnover, so maybe historically they don't have the numbers, but at least going forward they would have the names and contact information of normal homeowners, like they do on the land transfer tax affidavit.

The Chair: Thank you very much for being here today, Mr. Brothers.

KIPPS LANE TENANTS ASSOCIATION

The Chair: Our next delegation is Kipps Lane Tenants Association. Mr. Dimitrie, welcome. We're glad you're here today. We're running on a really tight schedule. I'm sorry we haven't kept to the schedule exactly, but we're glad you're here. You have 10 minutes after you have identified yourself. If you leave time, we'll be able to ask you questions.

Mr. David Dimitrie: Good afternoon. My name is David Dimitrie. I represent the Kipps Lane Tenants Association in London. We have waited a long time for

changes to the TPA and the Ontario Housing and Rental Tribunal, OHRT.

In the past few years, above-guideline rent increases and other tribunal decisions have left many tenants in our group intimidated and bewildered. Most tenants in our group had never participated in a tenants' association or given much thought to the legislation that governs tenants until the TPA was passed.

For many years, the rules seemed simple: Pay your rent on time and respect your lease. The current adversarial relationship between tenants and landlords was not as prevalent before the TPA. Everything changed for the tenants in our complex after the buildings were sold. One year after the sale, we were served with an AGI application which resulted in a 6.07% rent increase over two years. The AGI hearing was a crash course in the TPA and the tribunal for the 75 tenants who attended the eight-hour hearing. The hearing was confusing and upsetting for tenants, many of whom were seniors who could ill afford a hefty rent increase. The hearing was the impetus for the formation of the Kipps Lane Tenants Association.

I will now address two areas of concern to the KLTA and present suggestions for amendments to Bill 109.

The first major area of concern relates to capital expenses and the aforementioned AGI. I have read the changes made to this area in Bill 109. Some changes, such as the three-year 3% cap, are very welcome. However, the promise to eliminate these types of increases after 15 years is somewhat misleading. Few tenants live in a building this long, and this sunset clause will be a moot point when tenants move out and landlords can raise rents as they see fit. I have also not seen anything in the legislation which clearly defines what constitutes a capital expenditure. In the case of the AGI application which tenants in our complex went through, we ended up paying the full cost for such items as a jungle gym.

1700

I propose the following suggestions for amendments in this area:

(1) Regulations to Bill 109 should clearly define the types of items or projects claimed as capital expenses. How are tenants supposed to know how old carpeting, lighting fixtures or tiles are if they are replaced and charged as capital expenses? With Bill 109, the onus remains with tenants, who are often unrepresented, to explain why an item should not be included. This is what happened at our AGI hearing, where the total bill, by the way, was \$2.5 million.

(2) Since both landlords and tenants benefit from these capital expenses, they should both share in the costs. Tenants are currently paying the entire bill through rent increases granted to landlords. The owner of the building benefits from an appreciation in the value of the renovated property, as well as the improved facilities he can advertise to prospective tenants. Under the TPA and Bill 109, tenants are fully subsidizing the investments of their landlords. This item could also be legislated through regulations attached to the bill.

(3) Landlords who purchase buildings knowing that the building needs renovation and reconstruction before the sale closes should not be able to charge tenants for these pre-existing conditions once they have purchased the property. When a property owner decides to purchase a building, it is their duty to undertake due diligence. The prospective buyer has the choice to walk away or buy the building. The doctrine of caveat emptor should apply. If the building is in dire need of structural repairs, that factor should be reflected in the purchase price, not in a massive construction project that leads to an AGI application passed on to tenants once the sale and work are completed. This, by the way, is what happened to us. I have no problem paying my share for such work. However, I should not have to pay for work that a new owner was aware of before the purchase went through. Bill 109 fails to address this issue.

I now turn to my second area of concern, relating to the enforcement mechanisms of Bill 109. The TPA is enforced through the Ontario Housing and Rental Tribunal, OHRT, and the investigative and enforcement unit of the Ministry of Municipal Affairs and Housing. These are two distinct and separate entities which both enforce the TPA. Although the tribunal has been renamed, few details have been given as to how it will become user-friendly, as was promised in ministry literature. As a tenant, I've been served with two applications by my landlord, and I have filed two others. I've also attended hearings in order to better understand the system. The most glaring flaws I have seen and experienced at tribunal hearings are as follows:

(1) Inability of tenants to obtain legal certificates from legal aid in order to find competent legal representation for hearings as a complainant or respondent: At present, the duty counsel program funded by legal aid can only provide brief advice. Duty counsel does not represent tenants directly at hearings. Tenants have repeatedly complained to me about duty counsel service. The only form of direct legal representation in preparation for hearings in London is through the legal clinic at Western's law school. Bill 109 should guarantee legal aid to tenants who cannot afford to hire a lawyer or paralegal. Representation could be provided by a lawyer or paralegal, depending on the complexity of the case.

(2) Access to discovery before hearings: Currently, the way to obtain discovery is to obtain the application file at the tribunal office and pay \$1 a page for copies. It's quite difficult and expensive to read and copy stacks of documents in tribunal offices which are not equipped for this purpose. To make matters worse, neither the TPA nor Bill 109 contains deadlines and specific requirements for discovery of pertinent documents related to hearings or means for tenants to obtain case law that lawyers have access to.

(3) Direct phone lines to tribunal offices—who would have asked, in the year 2006? Currently there is no direct phone line to the London OHRT offices. You can only send faxes and wait for an answer. Counter staff cannot or will not answer many questions necessary when pre-

paring for a hearing. I asked the current chair about this matter. A tribunal officer contacted me and defended the policy. I was told that the call centre can answer all questions. This policy has only added to the confusion and frustration tenants experience in dealing with the tribunal. The government has promised a kinder, gentler Landlord and Tenant Board, but Bill 109 gives few details. I have a hard time taking this government at its word. Over the past three years, I've received several letters from Mr. Gerretsen requesting the patience of tenants. We are now rewarded with a bill which breaks many of Premier McGuinty's campaign promises, no province-wide, accessible hearings, and a bill which is being rushed through the Legislature.

(4) MAH accessibility plans: Accessibility plans of the ministry depend heavily on online information. The investigative and enforcement unit's site remains out of service at present, even though I contacted the minister and the unit's manager about this. It has been out of service for three months. The tribunal uses type so small that it is of little use for most people. I question whether Bill 109 contains corrective measures to these apparent breaches of the ODA/AODA and the ministry's own accessibility plans. I also question whether tribunal staff and adjudicators understand how the ODA/AODA is to be applied when dealing with disabled tenants who request accommodations. Bill 109 does nothing to correct a tribunal/board which from my experiences does not understand or fully implement the ODA/AODA.

(5) Greater sensitivity to tenants who request accommodations during hearings in relation to the ODA/AODA: Current tribunal applications do not use the ODA/AODA disability definition or specifically offer accommodations to complainants or respondents—see appendix 1 in your copies. Disabled tenants should be given the opportunity to have a closed hearing which is less intimidating and in line with ODA/AODA principles. I have to wonder how many members of the Legislature understand the chaos and frustration that tenants have been subjected to in attempts to obtain services and assistance from the tribunal offices or I and E unit office. Perhaps MPPs should attend one day of tribunal hearings before they vote on this bill in June. The hearings I attended were both distressing and sobering for me.

Thanks for your time. Please consider my comments and suggestions for Bill 109. I'll take any questions.

The Chair: Unfortunately, you haven't left sufficient time for us to ask questions. We appreciate your delegation. Thank you very much.

FLEMINGDON COMMUNITY LEGAL SERVICES

The Chair: The next group we have is Flemingdon Community Legal Services, Mr. Stevenson. Welcome. When you begin and you get yourself settled, you'll have 10 minutes. If you leave us time at the end, we'll be able to ask questions about your delegation.

Mr. Gordon Stevenson: I appreciate the opportunity to speak to you here today. Flemingdon Community Legal Services is one of the series of legal clinics that are found in the province. We represent low-income tenants. We appear in court at the tribunal regularly.

We are also endorsing the more extensive submissions that other tenants' groups, like ACTO and LCHIC and TAG, are submitting at this time. The first issue I'd like to raise—this is probably a novelty to you because my guess would be, you haven't heard it before—is about discount rents. It has always been kind of an esoteric part of the TPA, and it comes under subsection 111(2) of the new Residential Tenancies Act.

Under the TPA, you are basically entitled to take a discount up to about one month's rent. Under the RTA, that has been expanded to three months. Besides the regulations, and I urge you to do whatever you can to make the regulations as simple as possible around this matter, the ongoing problem is—it's been referred to as a bait and switch. We get calls from tenants about this matter quite frequently. What happens is that often the tenant—immigrants or those unable to understand legal matters—sign a tenancy agreement where they're paying, say, a rent of \$900 a month, but under the RTA, the lawful rent, if it's discounted for the full three months, could actually be \$1,200. So the tenants are paying \$900, and then at the end of the year, provided they're on a year's lease, they get a notice of rent increase that takes the increase on to \$1,200.

1710

My suggestion to you is that there needs to be a process where this is fully explained to tenants when they're entering into this situation, otherwise they simply don't know. They're paying \$900 at the end of the year, their rent is going up to \$1,200-plus, and this leads to what we call economic eviction, where the tenant simply isn't in a position to continue the tenancy where the landlord has increased the rent by \$300-plus. The suggestion is that either there be a special form created or a requirement that any discount agreement provide tenants with no uncertain notice that after one year, the rent is going to go up the full amount, or the rent may go up the full amount if the landlord so chooses to remove the discount. That's the first submission.

The second issue I'd like to talk about is the lack of jurisdiction of the landlord and tenant board to look at subsidy issues. In every new piece of legislation, there seems to be a place where there's a traffic jam and you come to a dead end. My suggestion to you is that this is one of those places for tenants who are in receipt of a subsidy in social housing.

The Social Housing Reform Act provides for the ability to challenge the rent, but the ability to challenge the rent is not done in a transparent process. It's done in an administrative way where, basically, you can complain, they send in what they call an internal review, and then that decision is final. So you're in a situation where the landlord says that's the rent, and he comes to the LTB and says the rent is X amount. You haven't had a full right of challenging the amount of that rent. Unless the

board has jurisdiction, if there is a problem with that rent, that problem is going to be built into the LTB's decision to evict, particularly in a situation where it goes to market rent. For the tenants who are in our catchment area, the rent could jump from, say, \$400 to \$800 or \$850. People are going to be evicted because they haven't been able to challenge the rent.

Just last week, I got a call from a guy who had applied for Canada pension disability. He had three appeals within that, which brought him from 1997 to 2004. The result was that he got a retro amount of some \$2,000 which was added to his income just before he moved into social housing. Social housing set a rent, he complained about it, and they increased it. He's faced with the prospect of having to either eat the increase, or his other alternative is that he can do what they call a judicial review, and that's a complex legal process that's simply out of proportion to deciding the amount of a rent.

My suggestion to you is that to entitle the board to evict people without being sure, as they have the authority and jurisdiction to do, which is to look at all the components and the facts of the case, to compound an administrative mistake that the tenant really hasn't had an opportunity to challenge is simply to overlook the reality of losing people on this one.

This has been an ongoing problem in legal clinics for some time. The current board takes the position, "Well, maybe we can; maybe we can't," in terms of hearing about the subsidy matter. I'd suggest to you that the subsidy matter is really no different than looking behind the discount rent to see what the lawful rent is, because the lawful rent, if the subsidy isn't in accord with the act, can be altered by the tribunal and the landlord penalized accordingly, at least under the regs that exist now. I'm not sure what the regs are under this.

The last thing I wanted to talk about was section 82, the tenant's right to bring, as a response to a landlord's rent arrears application, any matter that they could have raised in an application of their own under the act. Going back some years, this was common practice in landlord and tenant court. What they would do is, the tenant would raise the objection. If the landlord wanted an adjournment, the landlord could have an adjournment, sometimes on terms that the tenant pay some money into court. I'd suggest to you that what this really goes to is in accord with the legal principle of avoiding a multiplicity of proceedings. Why not have the whole matter settled? You probably read the *Globe* today, the CAP REIT building at Jane and Finch. Tenants aren't really proactive about pursuing their interests. I'd suggest to you that there's no better time for them to be able to put forward as a counterclaim, if you will, their problems so that they get heard. You come to a global figure in terms of what rent is owed and what—

The Chair: Mr. Stevenson, you have one minute left.

Mr. Stevenson: Okay. I'll finish there. Thank you.

The Chair: It's going to be too short for anybody to ask a question, so if you want to do a summary statement—is there anything you missed that you'd like to cover quickly?

Mr. Stevenson: How about set-asides? To build into the act a problem—every other act and the rules have a procedure for a mistake, illness or inadvertence for procedural reasons that a person gets to bring their matter before the court or the tribunal to determine whether or not they had a good reason for not avoiding it. I suggest to you that that's totally different than a review. In a review, the onus to be met—a review is an appeal procedure—is whether or not there's a serious error. That's not simply a procedural issue. I'd suggest that to build into the act a problem like tenants who aren't going to be able to make it, for whatever reason, and an ability to proceed based on the fact that they were unable to be there for good reason is just to create another roadblock. Thank you.

The Chair: Thank you very much.

SPAR PROPERTY CONSULTANTS LTD.

The Chair: Our next delegation is SPAR Property Consultants Ltd. Welcome. Thank you for being here today. Can you say your name and the group that you speak for? You'll have 10 minutes once you've begun.

Ms. Heather Waese: It's a company. My name is Heather Waese of SPAR Property Consultants Ltd. My company has represented landlords of rental properties ranging in size from four units to over 800 units. I've appeared before various government bodies that preside over rental matters throughout the province for the past 25 years.

I'd like to focus my comments on three areas of the proposed legislation from a practitioner's perspective in the hopes that my comments will provoke some consideration. I'm aware that it is the policy of this government to reduce both the maximum increase allowance for capital expenditures from 4% to 3%, as well as limiting the carry-forward allowance to only three years rather than an unlimited amount. What the government may not have considered is the impact this decision will have on owners of small residential properties, which make up a major portion of the available accommodation.

I think it can be most easily demonstrated by an example. A typical fourplex in today's market may likely achieve a monthly income of \$4,000. If a landlord finds it necessary to replace his roof or the windows, he's looking at an average cost of \$45,000. A useful life that would be considered according to the schedule of the current and past regulations for both of these items is 15 years. Using the current formula to calculate the justified allowance, the resulting rent increase needed to recover the investment would be 10.8%. The proposed limitation of 3% for three years will prevent that landlord from ever recovering his full investment. In fact, 17% of that allowance will be disallowed. Furthermore, after the useful life period has expired, they will be required to reduce the allowance by the awarded percentage but on a higher rent. This will either cause an economic hardship to those less sophisticated landlords who have invested their savings in rental property or cause them to reconsider making any major improvement to the property at all.

1720

Due to economy of scale, this limitation would not have as big an impact on the high-rise residential properties as the cost and allowance is spread over a larger number of units. It would be possible to coordinate the timing of the expenditure to ensure their costs eventually would all be recovered. It would not be economical for a landlord of a small residential property to replace half a roof or half the windows in the building. I urge you to consider incorporating either a slightly higher cap or a slightly longer carry-forward period for smaller residential complexes.

The second issue I'd like to bring to your attention is the issue of discounts. Contrary to Mr. Stevenson's position just prior to my own, we don't have that different a position on discounts, but it's coming from a different perspective. It wouldn't exclusively be for new tenancies, but looking at existing tenants as well. In this current competitive market, landlords would be more inclined to offer tenants discounts in rent if they were assured that the lawful rent would not be compromised in the future. Tenants who may be experiencing temporary economic difficulties could continue their tenancy at a reduced rent without the fear of falling into arrears. Landlords could accept a lesser rent while maintaining their lawful rent and not have to look for a new tenant. It is not unreasonable to ask landlords to provide greater details to ensure they are aware of their financial responsibilities in payment for the rent. We don't disagree in that regard at all.

Section 111 of Bill 109 attempts to address this issue, but landlords do not believe the approach taken in the legislation would solve that problem. The legislation only provides for discounts on a rent-free basis. No lesser reduction in the rent is permitted. This type of discount is not workable from both the landlord's and the tenant's perspective. There's no particular timing during a tenancy where an up-to-three-month free rent discount would be acceptable. If the discount is offered at the commencement of the term of the lease, landlords fear it would be too enticing for a tenant to skip out before the end of the term. If the discount is not offered until late in the lease, that would satisfy the landlord's concerns, but tenants don't feel it eases their financial burden when it's most needed.

I'm aware that clause (c) of section 111(2) provides for the ability to regulate other options relating to the offer of a discount. I'd like to urge the government, on behalf of both the landlords and perhaps some of the tenants, to consider more flexible discounts. The ability to offer discounts over a longer period of time is more valuable than the magnitude of the discount.

The last issue relates to the provision of the bill to permit respondents to raise maintenance issues at the hearing in reply to a landlord's initiated above-guideline-increase application. Currently, applications to recover capital expenditures and operating cost increases are heard in a relatively timely manner. This is the first time in my 25-year career that orders for application to increase rents above the guideline are issued prior to the

first effective date of the increase. This is not only a benefit to landlords, but also to tenants. Tenants will know what they will be required to pay and can make an informed decision whether they wish to continue their tenancy or seek other accommodation before their increase is effective.

This timeliness will be seriously challenged by the current proposal to allow respondents to an above-guideline increase application to raise individual maintenance issues not related to the items claimed in the application, but at the hearing. I'm not suggesting that these matters are not relevant or should not be heard by the board, but rather than permitting such matters to be raised out of context and without complete disclosure prior to the hearing will force delays in order to comply with the natural justice provisions of knowing the case you're required to meet. There could be multiple complaints by numerous tenants that the landlord may not be aware of. Landlords will have to be given time to investigate, determine the facts and be in a position to provide information as to what was done to address each of those claims. This will require, at the very least, twice the number of hearings to ensure the integrity of the process. The timeliness of issuing orders will literally be a thing of the past. For landlords, it means serious delays in recovering the cost of their expenditure. For tenants, it means uncertainty in the rent they will be required to pay.

We suggest that it would be preferable to require tenants who have maintenance problems to raise them in their own application, with full disclosure. This will give landlords the opportunity to investigate each tenant's allegation prior to the hearing and will give the tenants the opportunity to fully explain their position.

Thank you for your consideration.

The Chair: You're just under the wire. You've left a minute for everybody to ask a question, beginning with Mr. Duguid.

Ms. Waese: That was the plan.

Mr. Duguid: I'm trying to understand your concern about the maintenance issues being raised at the same time. I can't imagine it happening too often where a landlord would go in and not know what the outstanding serious maintenance issues are that exist. If they don't know, they probably should know, going into the hearings. You obviously think it's going to create a problem, but maybe you could explain a little more.

Ms. Waese: This would not be the first piece of legislation that permitted that to happen. In an above-guideline increase there could be as few as two or three tenants who attend at a hearing or as many as 30 or 40 tenants. If, out of a large complex, even 25 tenants attend, and of those 25, 10 of them have what they believe to be serious problems—a leaking tap or cracking walls, many issues—in fact, a landlord may not be aware of those if no notice to repair has been issued, or maybe there was a repair done that wasn't satisfactory but he's not aware of it. There are a lot of issues that could come up. In dealing in a one-on-one matter in an environment where 30 or 40 tenants are paying attention to the hearing, it does take a considerable amount of time and I

believe a landlord should have the opportunity to investigate what really is the situation. So it couldn't happen at that hearing.

Mr. Hardeman: Thank you for the presentation. I need some information on the bonus—the free rent or the reduced rent—to fill an apartment. Of course, the Tenant Protection Act today has created an environment where in fact there are more units available than there are people who need units. That's fairly simple. But at the time that legislation was put in place, we also got rid of the registry that said what the allowable rent will be. The allowable rent, after the decontrol has come off, goes to whatever you rent it at. If you give more information, but if you lower the rent, would that not then lower the rent forever?

Ms. Waese: Not if the provisions of discount make it acceptable and permissive for the landlord to say, "Your lawful rent is \$1,000. We are prepared to give you a \$50 discount per month." It would protect the \$1,000 maximum that he's established and previously could document. I think that's what we're looking at. To say you can have one month's free rent, as it currently applies in this legislation, for the reasons I outlined in my presentation, I don't think landlords in the past, nor would they in the future, offer that type of discount, because there's too much exposure.

Mr. Marchese: Two quick questions. You know that the government broke their promise to end vacancy decontrol. How important is that to you? Secondly, to your knowledge, how many landlords spend that regular inflationary increase that they're allowed, without having to justify how it's spent, on maintenance on a regular basis?

Ms. Waese: To your first question, I think the principle of the free market system is an important issue. To the landlords individually, though, it varies. Many landlords have already turned over 70% of their buildings, so vacancy decontrol really wouldn't play that much of a part to them. To some landlords who haven't turned over that many units, it would be, obviously, more near and dear to them.

Mr. Marchese: And the second one?

Ms. Waese: The second issue—

Mr. Marchese: The regular inflationary increase.

Ms. Waese: Yes, the guideline. I think it depends from year to year and landlord to landlord. For the most part, I would think that maintenance requirements require a landlord to spend that kind of money. With the nature of this legislation, where they're going to impose a freeze on landlords who do not do it, I think it even would push them further, in fact, to ensure that that maintenance is done.

The Chair: Thank you very much.

1730

HAMILTON MOUNTAIN LEGAL AND COMMUNITY SERVICES

The Chair: Our next delegation is Hamilton Mountain Legal and Community Services. Welcome. Thank

you for being here today. As you get yourself settled, if you could announce the group you speak for and your name, you'll have 10 minutes. I'll give you a one-minute warning if you get close to the end.

Ms. Jay Sengupta: My name is Jay Sengupta and I'm a staff lawyer at Hamilton Mountain Legal and Community Services. I'm here not only on behalf of my legal clinic, but also on behalf of a sister clinic, McQuesten Legal and Community Services, which serves low-income people in Hamilton's east end. I am also here to present on behalf of SHAC, which is a grassroots organization in Hamilton that's made up of community activists, housing providers, the local housing help centre that helps people find housing, the legal clinics and the Social Planning and Research Council. So it's a fairly broad group. They had applied for time to come and appear before you themselves, but regrettably they didn't have that opportunity. So I'm here on their behalf, as well as my office.

As you're aware, legal clinics practise in the area of housing law, so we speak from experience when we come before you. We welcome the government's move to reform the Tenant Protection Act. What we don't welcome is the package that's on offer. We urge you to consider some of the items that we've outlined in our submission to you because we feel that certain groups of people are being left behind in this reform—in particular, the people we represent and the people for whom we are trying to speak.

The first issue I'd like to address—actually, let me back up and say that we support the more detailed submissions that have been put together and submitted by LCHIC, the Legal Clinic Housing Issues Committee, and ACTO, the Advocacy Centre for Tenants Ontario. But from our perspective, let me begin by saying that the vacancy decontrol system being left intact poses a significant problem for the people we serve. Although the background material that was released with Bill 109 speaks about healthy vacancy rates in Ontario, the fact is that what impacts our clients is the shortage of truly affordable housing. There is very little affordable housing for our clients, and that's the key point we would have liked to have seen addressed, and the best way to have addressed that would have been to do away with the vacancy decontrol system. If or when the vacancy rates begin to shrink, we fear that vacancy decontrol will only exacerbate the problem that low-income Ontarians face.

Let me give you a sense of why I'm saying this and why this is a problem for the people we serve. In Hamilton—a medium-sized city, I guess—there were 4,258 active applications for social housing on the waiting list—people who were waiting to access affordable housing. Most of our tenants pay over 50% of their total income towards shelter, and the system is not working for them. We feel they're being left behind in this set of reforms and we urge the government to reconsider its decision to leave this system intact. We recognize that you've heard from a lot of people on this. In fact, we were part of the road show when Mr. Duguid

came calling in Hamilton. We made that point then. We urge that you take a look at our concerns and address them.

The other point I'd like to make, in keeping with the theme of who is being left behind: We feel that people who are on the margins are being left behind, people who are considered occupants, people who are under-tenants. The definitions of "landlord" and "tenant" need to be re-worked in order to give the most basic protection that other tenants have to people who are in under-tenant types of relationships—people who walk and talk and sound like ducks but for some reason aren't being called ducks. We think that those people are being left behind, and a lot of our clients aren't able to afford self-contained units. They're forced to rent and share accommodations. They're being left behind here.

Who else is being left behind? We say that if you don't have an expedited process by which somebody who fails to attend a hearing can get that matter looked at and can get to a full hearing of the evidence on their case, if you don't have that set-aside type of option for people who fail to attend for legitimate reasons like illness, absence, inability to read, literacy problems like that or even language barriers or disability-related barriers, there should be an expedited route that is not cost-prohibitive. This is a factor for our clients. With the system the way it is currently, the \$75 review request itself often poses a barrier for our clients. Sometimes people have to save for a couple of months in order to afford the \$45 to bring the maintenance application under the current system. To put a roadblock in their way when they've missed an appointment for legitimate reasons seems harsh.

Who else is being left behind? We say, and I think quite forcefully, that social housing tenants are being left behind by this proposed set of reforms. We do a lot of work in our clinic with social housing issues. We sit at tables with the city of Hamilton. We're invited to participate with them in trying to help them cope with the downloaded social housing portfolio and the rules around it. Not all decisions to revoke subsidy are made fairly. People are human. Human beings often make mistakes. An internal review option is the only option that low-income tenants in social housing have to challenge that, and that internal review may often be conducted by the person sitting at the desk next to the person who made the original decision. That internal decision is the final decision. As Mr. Stevenson pointed out, the only option then is judicial review, and that is cost-prohibitive. It's a complex legal procedure and, quite frankly, for most tenants who are in social housing it's not something that's a reasonable and realistic way to address that problem. At the moment, what happens is that we've been able to persuade some board members at the Ontario Rental Housing Tribunal to look behind a landlord's basic assertion that this is what the lawful rent is. Section 203 closes off that route completely and leaves our clients with only this very expensive route, and there's no guarantee of adjournments being granted while we pursue judicial review options.

This is a significant problem. The Social Housing Reform Act appears to have been modelled on the social assistance legislation, but in that scheme there is an appeal route past the internal review stage. Of course, the internal review is meant for administrators who are operating in good faith to look at and catch mistakes that they make. But sometimes reasonable people disagree, and if there's a real disagreement, we have only a judicial review option, where in the social assistance scheme you have the Social Benefits Tribunal that reviews and scrutinizes those decisions. That's all we're asking—

The Chair: You have a minute left, if you want to summarize it.

1740

Ms. Sengupta: I will.

I just want to close by saying that we do welcome the fact that you've taken the opportunity to look at this piece of legislation that we've been sort of labouring under, and we commend you for that, but we do ask that you not leave behind an entire segment of the population that is unable to thrive under the system that we didn't enjoy before but will continue to suffer under with this bill as it stands.

The Chair: Thank you very much.

TENANT ADVOCACY GROUP

The Chair: Our next delegation is the Tenant Advocacy Group. Welcome, Mr. Myers. We're glad you're here today. Could you announce the group you speak for and your name for Hansard? When you begin, you'll have 10 minutes.

Mr. Joe Myers: My name is Joe Myers. I'm a staff lawyer at Willowdale Community Legal Services, which is a community legal clinic in Toronto. Our legal clinic is a member of the Tenant Advocacy Group, which is a group of Toronto area legal clinics that deal with tenant issues.

To start, I'd sort of like to issue a disclaimer. I look at all of you there, and I know you're hearing a lot of the same things over and over again. I'd like to say I have something brand new to bring to you, but I don't. Having said that, I think the mere fact that a lot of these issues are being repeated speaks to their importance, and I'd like to speak to just a couple of issues before you today.

We have provided a written submission. Obviously, I'm not going to touch on all matters in the written submission, but I'd like to highlight a few, the first being one that's been spoken of many times today, which is section 82 of the Residential Tenancies Act. That permits a tenant to raise a number of issues in defence to a landlord's eviction application or arrears application; a tenant could bring their own separate application.

Under the system as it exists today, as you probably all know, a tenant can't raise those issues in defence to an application. They have to file their own application. Practically, what does this mean? It means that many times, a tenant goes to the tribunal, tells the adjudicator, "I have all these issues. There's a rent issue; I acknowledge that.

But we have these other issues.” The tribunal member puts up his or her hand and says, “Can’t hear it. You have to go and file an application.” The tenant goes and files an application, gets a hearing date, sometimes six weeks down the road, and a separate, different hearing is held before the tribunal, before a different adjudicator, where the issues are raised.

In effect, you’re having two hearings and there’s often a six-week delay between first hearing and second hearing, dealt with by two different adjudicators and many of the exact same issues are being raised in the hearings. I would submit to you that that is not an efficient way to operate a tribunal. It is a waste of resources and a waste of an adjudicator’s time.

Some of the deputants before you today will say, “If you permit tenants to bring these matters to the board, the place is going to come to a standstill and they’re not going to adjudicate anything.” I’m here to tell you that that’s nonsense. Under the Landlord and Tenant Act—I practised before the courts before 1998, when the Tenant Protection Act was proclaimed, and it was permissible for a tenant to raise these defences to a landlord’s eviction application before the courts. The courts did not come to a standstill. The judges made rulings, as Mr. Stevenson pointed out in his submission, permitting tenants to pay in a portion of the rent, providing receipts for the repair work they did and setting a hearing date to allow all matters to be adjudicated.

There’s no reason to think that things would be any different under the landlord and tenant board under the RTA. I think it’s a very important issue for tenants in that they need to be able to raise issues in response to a landlord’s application. I would urge the government to stick with that provision.

If you read the *Globe and Mail* today, you read about 10 San Romanoway and the repair issues that were addressed in that article, including mice and cockroach infestations, stench so bad that people weren’t leaving their apartments and general dilapidation of the building. Is it fair to tell a tenant living in those conditions who comes to a hearing that they can’t raise those issues? I would submit to you that it’s not fair for the board to do that. Those tenants should be allowed to raise those issues.

The second issue I want to speak is with respect to the elimination of the default process. Again, I would commend the government on eliminating the default process. I think it’s a positive step. However, there needs to be a set-aside provision in the legislation.

As a practitioner for 13 years doing these types of cases, I can tell you that there are innumerable legitimate reasons why people don’t show up for hearings. The most common one in the landlord-tenant vein is that a tenant gets served with an application by the landlord, and the first thing they do is to call the landlord and say, “You filed this application. You’re claiming I owe you this,” or “You’re claiming there’s this problem. How do we deal with it?” Many times landlords, like the majority of tenants, are reasonable. “This is how we deal with it.

We can work out some sort of plan,” and the tenant leaves that conversation with an agreement in hand, whether it be in writing or oral, and they think the matter is resolved. It’s over. They don’t go to the hearing. Under this proposed system, a hearing could be held, the tenant doesn’t show up, and there’s an order issued by the board evicting the tenant. There has to be a mechanism that permits a tenant to approach the tribunal, approach the board and have that order dealt with.

Under the current system, that would be a review application. As you know, a review application is costly. It costs 75 bucks to file a review application. Secondly, the onus that a respondent has to meet on a review application is that you have to show there’s a serious error in the order. In the scenario I’ve presented to you today, where is the serious error? There is no serious error. If the tenant owes \$500 but they’ve made arrangements with the landlord, and the landlord shows up at the hearing and says that \$500 is owed: eviction order; signed off. Where’s the serious error in that order? The serious error is in the way the order was given, the way the order was obtained, and that the tenant thought the matter had been worked out, so they didn’t have to attend the hearing.

A review under the current system may not work, because there is no serious error. In the proposed RTA there needs to be a mechanism that addresses this situation where tenants, for good cause, do not show up at a hearing, and don’t hold them to a \$75 fee and an onerous legal test in order to have the order of the board dealt with.

Finally, you’ve heard a lot of horror stories today about the issues of the Social Housing Reform Act and having the board given the jurisdiction to deal with rent subsidy issues. I would implore the government to give the proposed Landlord and Tenant Board that jurisdiction. A recent case that we’ve become aware of will illuminate this.

A grandmother, pursuant to a CAS order, was given custody of her grandchild. She didn’t tell the landlord in a timely way about the new tenant, the grandchild. Technically, the composition of her home had changed and she was required, under the Social Housing Reform Act, to tell the landlord. It didn’t change anything in terms of her rent, didn’t change her income in any way, but because she didn’t disclose this in a timely way pursuant to the rules under the SHRA, her tenancy was revoked. She did an internal review. It’s an internal mechanism. She’s not given a chance to attend. She submits something in writing to the same people who basically revoked her tenancy and, not surprisingly, they upheld the original decision. If the landlord puts the rent to market rent, she can’t pay the arrears of rent. The case goes to the proposed Landlord and Tenant Board, and there’s no authority there for the board to look into the circumstances of the subsidy revocation. It doesn’t make any sense. It’s a ridiculous result, I think we could all agree, that that woman could be evicted for that reason. But as the legislation is drafted today, that’s exactly what

could happen and she would be left with the long, tortuous process of doing a judicial review application to try to correct that result.

It's just not a practical way to deal with things. If the RTA can't be amended to give the board the jurisdiction, then the SHRA should include some type of independent body where these types of appeals can be heard. It's very important to low-income tenants in the province and of course in Toronto.

Those are my submissions, subject to any questions from the committee.

1750

The Chair: You've left just over a minute.

Mr. Myers: I timed it perfectly.

The Chair: If you have a summary statement you'd like to make—

Mr. Myers: No.

The Chair: Okay. Thank you very much.

Mr. Myers: I've bored you enough already.

The Chair: No, no. It was interesting. Thank you very much for being here.

Mr. Myers: Well, that's nice.

The Chair: It was. I know we were listening. Thank you very much.

Committee, we possibly have an upcoming vote any minute now. I'm going to ask our next delegation to come forward. We'll see how much we can get through. The following delegation has graciously agreed to appear after our dinner recess, so this would be the last delegation before our recess.

O'SHANTER DEVELOPMENT CO. LTD.

The Chair: O'Shanter Development Co. Ltd.: Welcome, gentlemen. Should the bells start to ring, we will have a 10-minute break to go and vote. Hopefully, we'll get through as much of your delegation as we possibly can. It's not that we don't think you're interesting—

Mr. Jonathan Krehm: Should we stay around after or not?

The Chair: Let's see how much we get through and I'll tell you what we can do. Welcome.

Mr. Krehm: Thank you very much for the opportunity to appear here. My name is Jonathan Krehm. I'm one of the owners of O'Shanter Development. Our in-house legal counsel, Eric Ferguson, will speak on different matters.

O'Shanter is a privately owned company that has owned and managed rental housing in Toronto since the 1950s. Currently, we manage approximately 2,000 apartments. We are the only residential property manager in Canada to have both ISO quality management and environmental certifications. We are proud to have met the requirements of the Kyoto accord in the buildings we own.

One of the first things I want to address is the smart metering provisions in part VIII of the act. We support the intention of the act to encourage smart metering. Part VIII of the act unfortunately will have the opposite

effect. We have already put on hold a plan to install smart meters at one building because of the proposed framework in the legislation.

Subsection 137(4) requires that the landlord's obligation to provide electricity will continue for one year after the smart meter is installed. The electricity costs in this period are the basis for a rent reduction calculation. This creates a regime where a tenant, by increasing his electrical consumption in this 12-month period, can increase the amount his rent will be reduced by. This is a Catch-22 that we don't plan to be exposed to.

Clause 137(3)(b) also requires a lowering of the rent by the amount the tenant will have to pay as a monthly administration fee for having a meter. In a 200-suite bulk-metered building, a landlord currently pays \$30 per month as an administrative fee to the utility. The proposed legislation will have him lower his rent by \$2,500 per month after smart metering. This is an onerous penalty and strong disincentive for anyone to proceed with smart metering of bulk-metered buildings.

Subsection 137(5) requires the providing of tenants' information that may or may not be forthcoming from the smart metering entity. This creates a potential breach of a landlord's obligations under the act, which adds to risk and uncertainty. After electrical costs have been assumed by the tenant, the situation is the same as with the many thousands of apartments that are currently separately metered in the province: The landlord is not party to the electrical costs that have been assumed by the tenant. Electrical usage varies enormously, depending on one's personal habits, and the information required to be given is of little value to anyone.

Subsections 137(7), (8) and (9) create an ongoing risk of being exposed to applications for rent rebates, orders to renovate and meeting ongoing "requirements relating to electricity conservation." This again exposes a landlord who installs smart meters to ongoing and unquantifiable risk.

We recommend that part VIII be amended as follows:

(1) That the calculation of rent reduction be based on an apportionment of the cost of providing electricity in the 12-month period immediately prior to the installation of the smart meter;

(2) That subsections 137(8) and (9) be deleted. Removing disincentives from energy conservation measures should be of primary importance for the government;

(3) That subsection 137(5) be deleted entirely.

The other matter I'd like to speak about is landlord applications for above-guideline increases. The changes in what is in the rules governing capital expenditures are onerous. Restricting capital expenditures to only eligible items is draconian in effect. There are over a million rental units in the province. Whatever list of eligible items ministry staff come up with, many situations will arise where perfectly legitimate capital expenditures will not be included. The test under the current law works well. The current test is that a capital expenditure may be disallowed if it is found to be unreasonable. This was no rubber stamp. In the very first application we made under

the TPA in 1998, a \$1.5-million capital item was disallowed. We recommend changing the test of eligibility back to one of disallowing items deemed to be unreasonable.

Subsection 126(9) should be deleted. Under all preceding rent regulation laws, from 1975 until 1998, tenants had the right to oppose rent increase applications by alleging breaches in maintenance obligations. This matter has been brought up before by Mr. Duguid and Mr. Myers, and I'd like to address this.

Hearings were long and cumbersome, with an immense amount of time being spent with little effect on the outcome, and there were huge backlogs. In the 1980s, backlogs were such that applications were four years behind. The only time in my career since 1979 doing rent review applications when there has not been a backlog has been in the last four years. To say that somehow we'll return to something that wasn't the way it was is just not correct.

The costs to the government caused by the return to such a regime will be substantial. There would have to be a great increase in staff if you don't want to have the backlogs that were chronic under four different laws.

Tenants who have legitimate problems have the ability to make applications and seek remedies elsewhere in the act. This is fair and how it should be. Giving tenants the ability to turn all landlord applications into open-ended hearings is unfair and will be a burden to the new board.

Mr. Eric Ferguson: My name is Eric Ferguson. I'm in-house counsel at O'Shanter Development Co. I've been there since 1982. I've been before the courts, and also the Ontario Rental Housing Tribunal, on landlord and tenant matters. Contrary to some previous opinions, I'd like to begin by saying that, in my view, the tribunal is actually a good forum for the disposition of landlord and tenant matters. The staff is good. They're accommodating. The hearings are held in a reasonable time frame. Basically, I think the place works fairly well.

I'd like to comment on three suggested changes in this act and tell you why I think they will impact negatively on the way the tribunal, as it becomes the board, will work.

The first of these is the requirement for hearings on rent arrears applications even where tenants do not file disputes. Under the current system, where a landlord serves a tenant with such an application, it's very clear on the forms that in order for a hearing to be held, the tenant has to file a dispute. If the tenant doesn't file a dispute and there's a good reason for it, then the tenant can file a motion to set aside. If that motion to set aside is successful, then a hearing is held anyway.

If the default process goes away and all landlord applications that are rent arrears applications are brought before the board, then I think this is going to increase automatically the workload of the board, if only to deal with those matters that are now dealt with by default, because, frankly, most of the tenants who don't bother disputing under the current system are not going to be there on that day anyway, in my view. It seems to me that

the default process does work. It may, at first blush, sound a bit draconian, but there is a fail-safe. If people really didn't have an opportunity to participate, then they have an opportunity to seek counsel, to seek legal aid, explain their position and bring a motion to have things set aside, and then a hearing will be held.

1800

The second negative change is the one about raising issues at arrears hearings without notice, and the same thing goes for above-guideline increase. Mr. Myers and Mr. Stevenson waxed eloquently about how it was back in the courts at 361 University Avenue. I remember those days, and I don't remember them in quite the same way they do: having to go before the deputy local registrar, find out that somebody had disputed on something, and then go before a judge on another day and be told, "Really, what I want to talk about is this maintenance issue, about the kitchen cupboard," or the fridge or the that. You didn't have any notice of it. You didn't know what they wanted to talk about. So yes, you had to have an adjournment, and you had to come back on another day, or you had to try to slug it out on the spot, call the property manager and try to resolve it.

If you want to do anything in this area, what I would ask you to do is somehow cause a tenant who wants to bring this kind of issue before a hearing on a rent arrears matter to give the landlord notice before the hearing so that the landlord has a chance to prepare.

The last item I'd like to deal with, very briefly, is the mediation area—

The Chair: You have 30 seconds to deal with it.

Mr. Ferguson: —okay—which goes as follows: Currently, mediated agreements are binding. If a party defaults, an ex parte order results. Now these mediated agreements are going to be the subject of set-aside motions. They won't be used as much. People won't use the mediation services as much, and I think that's a shame.

The Chair: Thank you very much, gentlemen. You've left 14 seconds; that's very good. That was all the time.

WATERLOO REGIONAL APARTMENT MANAGEMENT ASSOCIATION

The Chair: Committee, we didn't have a vote, so I don't have to inconvenience our next delegation from the Waterloo Regional Apartment Management Association, Mr. Trachsel. Thank you very much for being so accommodating tonight. If you could introduce yourself and the organization you speak for, you'll have 10 minutes.

Mr. Glenn Trachsel: I would like to thank the committee for this opportunity. I see some familiar faces from the town hall meetings. My name is Glenn Trachsel. I'm with the Waterloo Regional Apartment Management Association. We represent landlords in the Kitchener-Waterloo-Cambridge-Guelph area. Our 450 members own anything from single condo units to multi-unit buildings.

It's a common acknowledgement by our members that one of the biggest challenges landlords face is various governments: Everybody feels the need to change the rules, and it makes it very difficult to do long-term planning. We at WRAMA would like to go on the record as questioning the need for these changes at this time. Rents are being held down due to market influences, tenants have choices, rental housing providers are improving their buildings, and Waterloo region has several new construction projects. We contend that the current government's motives are more political than practical.

Interjection.

Mr. Trachsel: I've heard that from various sources.

I would like to touch briefly on the issue of rent controls in general. We have long argued—there is overwhelming anecdotal evidence—that they do more harm than good. There are several studies from different countries to prove this. The cities in Canada that currently have the lowest vacancy rates are the ones with the tightest rent controls. Government and tenant advocates have to realize that private housing providers are just that; we're not non-profit social housing providers. That's a different issue that has to be addressed by government.

I find it ironic that the government, in selling the idea of hydro costs rising to the true cost of production and delivery, admitted it is going to be a burden on lower-income people. To justify that, they espouse the false economy theory. They say that if prices were held down artificially, it would mean poorer service and higher costs down the line. Why is it not clear that the same thing affects apartments?

To their credit, they have left in the provision that rents can be negotiated with new residents on vacancy. Without this provision, there would have been a major collapse of the industry as a whole.

To answer your question to the lady from SPAR, you asked if the landlords were using the inflationary increase to improve their buildings—

Mr. Marchese: On a regular basis—every year.

Mr. Trachsel: I have an 11-unit building. I provide all the utilities. The inflationary increase is just that: It covers the increase in the cost of gas, the increase in the cost of hydro. Personally, without this provision of being able to negotiate rents on vacancy—I've put in new front steps, a new chimney and a new water softener. The only reason I've done that is because on turnover I can recoup that money. Like I said, without that provision you'd see an exodus from the business.

Since I only have a few minutes here, I'm going to focus on the items that concern us the most. WRAMA works in conjunction with the Federation of Rental Housing Providers. We endorse any presentations they've brought before the committee. The issue of OPRIs, the above-guideline rent increases, again, we feel the 3% will deter improvements, and we feel that the submetering issue is just unworkable.

Our greatest bone of contention is with section 82, tenant issues in non-payment application. We feel this

provision shows the bias of government and a true prejudice against hard-working, honest landlords. Under the current rules, and under section 29, a tenant whose rental apartment is not maintained or is unsafe can apply to the tribunal or the new Landlord and Tenant Board for orders for repairs. Under section 59, a landlord can apply for eviction for non-payment of rent. Why are these issues being intermixed? The landlord is the victim under section 59. Landlords will be subject to trial by ambush, not knowing what issues will be raised. To answer your question, Brad, a lot of times you don't know what's going on in that building because the tenant now has an opportunity to cause damage, and also, if he has done damage in the building and it's his fault, he's not going to notify us ahead of time. But now he has an out. He can use this. He's up against the wall if he's getting evicted and can use that, because he has no other way to go.

It's going to open a Pandora's box of conflict and animosity between landlords and tenants, as tenants take the law into their own hands in order to take advantage of a new, free hearing option by not paying the rent or creating the damage to be evicted. It puts undue responsibility on adjudicators who may or may not have the expertise to decide if the maintenance issues are legitimate, based on a few photos and testimony from someone who has nothing to lose by lying.

Under other provisions in the act, evictions will now take longer, since everything is going to a hearing. A longer eviction will mean a greater loss of rental income. Most orders for payment are never honoured by the tenant. We put them on the wall beside our Bre-X and our Enron stock certificates. It's a serious loss for landlords and other tenants and the whole economic chain. In a small building, one non-paying tenant and a lengthy eviction means losses in the thousands of dollars. This translates into a delay in buying that new energy-efficient fridge. This penalizes the tenant who doesn't get the fridge; it penalizes your government, which is trying to cut down on the hydro usage. I make this example somewhat tongue-in-cheek, but I really feel that people who draft this legislation don't look at the ripple effects.

As Mr. Milloy stated in Parliament on May 15, I believe, the landlord is not the enemy and the tenants are not the enemy. We can work together. Landlords are only concerned about the current losses and the time consumed by a non-payment tenant, and it will only get worse under this legislation. We're asking you to protect us by removing section 82 and allowing for default evictions for non-payment, even if you have to do something about the notice procedures. Thank you.

The Chair: You've left a minute for everybody to ask a question. Mr. Hardeman, did you want to ask a question?

Mr. Hardeman: Thank you very much for the presentation. I appreciate the blunt comments. We've been hearing a lot, and it seems that the legislation was designed to deal, the minister said—with good landlords and good tenants, this would be a good piece of legislation. The problem is, we all know that what we need is

legislation that deals with the problem areas, not with the good areas.

We've also heard that there seems to be an intention of the landlords to move people out of their apartments as fast as they can. Could you tell me why landlords would want to get rid of their tenants, as opposed to—I've been in business for many years, and I always wanted to get customers, not get rid of customers.

Mr. Trachsel: Exactly. I mean, if you've got someone in this market and you've got a reliable person who's quiet and they're paying their rent on time and they're not doing any damage—I don't have the costs with me; I feel a little remiss that I didn't actually bring the costs of advertising, the cleanup and the turnover—trust me, you don't want an empty apartment in this business.

Mr. Marchese: Mr. Trachsel, I have two questions, if we can. The first one has to do with the metering. I've noticed and heard that all of the landlords oppose it. They say it's unworkable or it's not smart, and I haven't heard one tenant say it's a great idea. Do you have a sense of where they got this thing from, this idea of metering? Where does it come from? Out of the consultations that they had?

Mr. Trachsel: You mean why it's in the legislation? Is that the question?

Mr. Marchese: The proposal to have submetering in the apartments.

Mr. Trachsel: It's a proposal that is valid in principle.

Mr. Marchese: Is what?

Mr. Trachsel: Is valid in principle. Yes, it's a good proposal—

Mr. Marchese: But it's not workable?

Mr. Trachsel: It's not workable the way it is in this legislation.

Mr. Marchese: Okay. So maybe Mr. Duguid will tell us where he picked up these ideas.

The second one—

The Chair: I'm sorry, Mr. Marchese. You don't get another question, because that one went a little too long.

Mr. Trachsel: I will say, though, that I—

The Chair: You can answer it when you get to Mr. Duguid.

Mr. Duguid, you have the floor.

Mr. Duguid: I'll leave him a little extra time. I just want to thank Mr. Trachsel himself for his input in this. He was very active during the hearings. I know he attended the one in Kitchener-Waterloo and some of the others too, I think. I just want to thank him for his input. He worked very hard on behalf of his association, and I congratulate him for that. I'll give you a little extra time to respond to Mr. Marchese's comment.

Mr. Trachsel: I do believe that the Federation of Rental Housing Providers asked for it. We do want it. It's just that it's not—

Mr. Marchese: It's not what they proposed.

Mr. Trachsel: Yes, it's not feasible the way it's in this legislation.

Mr. Marchese: And the—

The Chair: Whoa. You don't get the floor anymore. I'm sorry.

Thank you, Mr. Trachsel. We appreciate your being here today. Thank you for your patience.

Committee, this brings to a close our hearings for this afternoon. We are recessed until 7 p.m. this evening.

The committee recessed from 1811 to 1901.

ROB HERMAN

The Chair: Good evening. We're here this evening to continue public hearings on Bill 109, An Act to revise the law governing residential tenancies. Our first delegation this evening is Mr. Rob Herman. Welcome, Mr. Herman. Do you have a handout?

Mr. Rob Herman: No, I don't.

The Chair: All right. If you could say your name for Hansard, I'll record your name. You're not speaking for a group, you're just speaking for yourself?

Mr. Herman: For myself.

The Chair: You will have 10 minutes. If you leave us any time at the end, we'll be able to ask you questions. I'll give you a one-minute warning if you're getting close to the end.

Mr. Herman: I'm Rob Herman. I wanted to address the committee because Minister Gerretsen said he wanted this legislation to be fair, and to reward good tenants and landlords and punish bad tenants and landlords. I wanted to try to put forward a case for how I think it's going to adversely affect good landlords with unscrupulous tenants.

I have a small building that I manage in Toronto. I had occasion where a tenant had not paid the rent for a couple of months and so I took him to the tribunal. The tribunal officer found that the tenant had not paid their rent for a period of April 1 to May 31, which is today, and the parties agreed the tenant was \$2,100 in arrears. When the tenant came to the hearing, the tenant stated that they fell into arrears due to an incident where they suffered a grade 3 concussion, a bruise to his spinal cord and a torn knee ligament, that due to the incident he lost his job as an installer and was no longer physically able to carry out his job duties, and that contrary to the doctor's instructions he had a new job, had considerable medical expenses and had not yet filled his medical prescriptions due to the cost of the prescriptions and the lack of his income.

The tribunal officer went on to find that the witness was credible and that he accepted his evidence. When he said he accepted his evidence, there was no evidence presented. The tribunal officer, despite my protestations, didn't ask him to justify or prove a thing. The tenant had said he had all these prescriptions not yet filled. Well, if he had these prescriptions not yet filled, why didn't the tribunal officer ask him to show at least one prescription? He didn't ask him anything. I think this is grossly unfair, and it's only going to get worse under the new system.

It says here, "The landlord submitted that he did not believe that the tenant would pay the landlord the arrears

owing.” The tribunal officer: “I disagree with the landlord’s projection that the tenant will not pay the landlord the arrears owing. The tenant’s non-payment of rent was due to an event entirely out of his control, and I find the tenant willing and able to repay the landlord the arrears owing.”

The tenant was given eight months to come up with the arrears. The first payment was supposed to be on June 15. This afternoon I received by a fax a bill from the tenant for repairs that he supposedly undertook to his apartment, which he says were under the superintendent’s instructions. Coincidentally, the bill happens to be in the same amount as the rent he’s supposed to come up with for June. Obviously, we’re starting all around the mulberry bush again.

I don’t know what the Legislature wants me to do. Do you want me to look after the 31 good tenants in the building, or am I supposed to waste my time and resources on this person whom I’m just playing games with? That is a serious issue.

When you take into account the fact that in future the legislation is going to allow that all issues can be entwined, where you can bring up any issue and apparently without any evidence—if a landlord wants to do work to his building and wants to come before the tribunal to get remuneration, recompense, by way of a rent increase, he doesn’t come before it and just say, “I spent all this money.” He has to provide evidence. He has to provide bills and cancelled cheques. So if it’s incumbent upon the landlord to have to provide evidence, then why is it not incumbent upon the tenant to have to provide evidence? To me, that is not fair and balanced legislation.

The other problem is that once the system bogs down, which it inevitably will due to the fact that default orders are no longer going to be allowed—plus, you’re going to be entwining these orders. Even if they’re there just for non-payment of rent, which now takes about 10 minutes, it’s going to take an hour when they start being able to bring up all the maintenance issues. The system is going to get completely bogged down, and when that happens, what happens in the case where a tenant comes in and they’re extremely disruptive and all the other tenants in the building are asking me to get them out? What am I going to do with that tenant when I have to bring this application forward and it takes me eight or 10 months to get this person out? I don’t think it’s fair to tenants either.

So for those reasons, I think the legislation is very unbalanced, very unfair. I think it’s actually a breach of fundamental justice that we should all be allowed. I think if the tenants have to provide evidence, then we should have to provide evidence too, which actually we already do, but I think it’s incumbent upon the landlord to have advance notice of what it is the tenant is going to bring up at a hearing. We should have an ability to remedy the situation if it’s serious, and it should be incumbent upon the tenant to have to provide evidence as to what they are saying.

I think that’s really all I had to say.

The Chair: Great. You’ve left a minute for each party to ask a question, beginning with Mr. Marchese.

Mr. Marchese: Mr. Herman, is this the first time you’ve been before the tribunal with a case?

Mr. Herman: No.

Mr. Marchese: So there have been other occasions where you’ve been before tribunal members to resolve a dispute.

Mr. Herman: Right.

Mr. Marchese: You described an incident where the tribunal obviously was unfair to you, at least as you described it. It didn’t work for you, and it worked for the tenant. Were there other cases where the tribunal worked very well for you?

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Mr. Herman: I have received orders where, if a tenant didn’t pay their rent, they were evicted.

Mr. Marchese: So the tribunal was, in this instance, not very helpful, but in other instances was very good in terms of dealing with your issues with other tenants?

Mr. Herman: In the other case, the tenants admitted they didn’t pay the rent and they were asked to leave. In this case, though, there was no evidence provided by the tenants that what they were saying was true. They had never come to me, in all that time, and said, “Mr. Herman, there is a reason I can’t pay the rent.” My grandfather owned that building 50 years ago and I manage it today. We don’t kick people out on the street.

Mr. Marchese: I understand. Thank you.

The Chair: Mr. Flynn?

Mr. Kevin Daniel Flynn (Oakville): Obviously, when you try to bring forward a piece of legislation, you try to bring it forward in as balanced a way as you can. Earlier this afternoon we heard delegations that were claiming that the proposed legislation does not go far enough in protecting the interests of tenants. Your view seems to be the same: that if it does anything, it goes too far in protecting the rights of tenants, or protecting the rights of bad tenants perhaps would be a better way of putting that. Could you just expand on that a little bit? And are there changes that are contained in the proposed legislation that you would find helpful?

Mr. Herman: I think it’s a big mistake to be entwining other issues. If a tenant isn’t paying his rent, then a tenant isn’t paying his rent. That’s separate. If they have maintenance issues, there are lots of avenues for them to bring forward—they can get reductions in rent; they can do all kinds of things.

Mr. Flynn: So that’s one amendment that you would propose, that they be split somehow?

Mr. Herman: Oh, absolutely. That’s going to completely bog the system down.

Mr. Flynn: Is there any other constructive—

The Chair: Sorry, Mr. Flynn, you’re out of time. Ms. MacLeod?

Ms. MacLeod: Thank you very much for your presentation and for attending with us this evening. You say that your situation will get worse under a new system. Mr. Flynn has acknowledged that we’ve heard that throughout the day, that this piece of legislation is perceived by both tenants and landlords as being worse

for both. I would like you to explain to me what this committee should do to improve your situation.

Mr. Herman: As I said, they should not be entwining orders. I don't think they should stop the default orders. If anything, maybe a little longer notice period should be given to the tenant.

Maybe there should be some mechanism that if they legitimately didn't receive the notice for some reason, the issue could be revisited. I think they even have that ability now. But to just get away with it is ridiculous. The system is going to crash.

The Chair: Thank you, Mr. Herman. We're out of time. Thank you very much for being here today.

Our next delegation is Tim Rourke. Is he here? Not here.

KENSINGTON-BELLWOODS COMMUNITY LEGAL SERVICES

The Chair: We'll go on to our next delegation, Kensington-Bellwoods Community Legal Services. Welcome. As you get yourselves settled, if you are both going to speak, it would be helpful if we knew both your names and the organization you speak for. After you've done that, you'll have 10 minutes. If you leave us some time at the end, we'll be able to ask you questions. I will give you a one-minute warning.

Ms. Tracy Heffernan: Tracy Heffernan. I'm here from Kensington-Bellwoods legal clinic.

Ms. Nina Hall: Nina Hall.

Ms. Heffernan: I work as a staff lawyer at Kensington-Bellwoods legal clinic. Prior to that, I worked at the Ontario Rental Housing Tribunal as a tenant duty counsel. Those are essentially the front lines of tenant advocacy.

I will be speaking about Bill 109 and the potential impact on low-income, private market tenants, and my colleague, Nina Hall, will be addressing the potential impact on social housing tenants.

We'll only be touching a few points in our presentation, but our brief details all of our concerns with the bill.

Our legal clinic is in downtown Toronto. Our clients are low-income and they include the working poor, seniors, persons with physical disabilities, mental illness and persons in receipt of social assistance. Primarily, it's an area of single-family homes and three- and four-storey houses that are subdivided into apartments. Sometimes landlords live on the premises; most often they do not. There are few high-rises.

The combined effect of increased gentrification in the area and the removal of rent control in 1998 has been absolutely devastating for our clients. We have witnessed skyrocketing rents, easily doubling and sometimes tripling, forcing long-term but low-income tenants out of our area. If there was ever a need for tenant protection, it is now.

We applaud the Liberal government for taking steps toward increasing tenant protection, but I would like to address the three following concerns.

First, we're concerned about the purpose clause at section 1 of the Residential Tenancies Act. Combined with the change of name, it appears to signal that the government is moving away from a tenant protection focus. The purpose section needs to be amended to clarify, for the Landlord and Tenant Board and for the courts, that the legislation is intended to retain its tenant protection focus. This would only be in line with previous court interpretations, including the Ontario Court of Appeal. It should be clear that landlords and tenants do not have equal bargaining power, and this should be recognized.

Secondly, the Liberal government recognizes that tenants should not be evicted without a hearing, and this is an excellent change. Our only concern is the fact that the RTA does not provide a mechanism to set aside an order if a respondent does not attend the hearing. There are many legitimate reasons why a respondent may not attend, and it could be a landlord or a tenant who doesn't attend that hearing. The RTA should include a provision that would allow a respondent to set aside an eviction order. This is standard practice in most jurisdictions, including Small Claims Court. It's a basic issue of procedural fairness.

Finally, section 65 of the RTA provides a fast-track eviction process, with no opportunity for a tenant to remedy, where a landlord resides in the same building that has no more than six units. As there is no chance to remedy, this may allow for an eviction for an isolated incident.

As described above, this section potentially captures a significant proportion of the rental accommodation in our community. Given our direct experience of the dishonest tactics employed by some small landlords to evict tenants from their rent-controlled homes in order to increase the rent, we are extremely concerned that this provision will be abused. The RTA already provides an expedited eviction process to all landlords when there are allegations of impaired safety. This is by far the more appropriate process in these circumstances.

Thank you for the opportunity to speak this evening. I'm going to turn it over to my colleague Nina Hall.

Ms. Hall: I'm going to speak to one particular point. I think you've heard it this evening already from some of my colleagues in the clinic system, and I see that you've heard from ONPHA today as well. I'm talking about section 203 of the act. Our submissions on this are at page 4 of our submission.

Why talk about this, as my colleagues have indicated to you, including Tracy? This is the meat of what we're dealing with: landlord and tenant issues and low-income tenants. Section 203 removes from the jurisdiction of the tribunal—and, I'll explain to you, from anyone's jurisdiction—the third-party review of the legality of rents for social housing tenants. You can read the text for yourself for what the act actually does, but it excludes that jurisdiction.

Why me to talk about it? Because in addition to my experience here as a clinic lawyer and on the legal aid side of the things, I spent nearly two years as counsel to

the Metro Toronto Housing Authority, back in the day when these disputes could be determined by an independent third party, that being judges in landlord and tenant court. The Metro Toronto Housing Authority has now merged with Toronto Cityhome and whatnot and is now literally the biggest public housing landlord in the province.

The significant thing here is that you're creating a subclass of tenant: social housing tenants who do not have an affordable, expeditious forum in which to challenge the legality of their rent. The place that makes sense to do that is at the board, because the board is the place where landlords go to evict them for the rental arrears that can result from the withdrawal of subsidy or from a dispute in the calculation of what that subsidy can be. Every other tenant in Ontario can raise the defence to an arrears application, "My rent has not been legally determined," except social housing tenants.

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The Social Housing Reform Act does not provide an independent third party to look at a dispute between the social housing provider and the tenant with respect to the determination of their rent. It provides for a paper internal review process, which some providers are turning into an in-person internal review process in smaller jurisdictions. But that's not a third party. That's your landlord, the social housing provider, reviewing the decision that it made. That process mimics a process that you may be familiar with under social assistance legislation. Under social assistance legislation, there is an internal review process—I mean Ontario Works or Ontario disability support. The distinction there is, if you still disagree with the result of the internal review, you have an appeal to the Social Benefits Tribunal. You have an appeal route to an independent, third-party decision-maker. The Social Housing Reform Act does not include any such review.

What's left for a tenant? Only theoretically—because practically, it's nonsense, and for the taxpayers of Ontario it's nonsense and it's bad public policy—theoretically, what's left is an application for judicial review. That's an application that you make in court to the Superior Court of Ontario. It involves documents; it involves having a lawyer. Where are the lawyers going to come from? They're going to have to come from somewhere. These are the lowest-income people, who are in the process of losing the most important asset they have, which is their subsidized housing. You're going to have to find the money for legal aid lawyers to present these challenges, because these challenges will exist; you are going to have to find resources for the disbursements, and landlords, social housing providers, will have to respond to these kinds of applications with their own lawyers. They will have to pay their own disbursements, they will have to pay their own legal fees so that we can use up court time, which is more expensive for taxpayers, so that we can have judges being the independent third party who can review the legality of a rent determination when it's made under the Social Housing Reform Act.

I am not going to compare salaries between judges and board members, but I'm guessing there's probably an exponential difference. This is completely inefficient and absurd. It's also a basic issue of fundamental justice for any tenant in Ontario that they have an expeditious and cheap place to go to challenge the legality of their rents if that's the issue they need to raise to prevent their eviction.

Why me? I said so at the beginning: to raise this issue with you. I had the experience of doing exactly that: defending a major social housing landlord with respect to arrears applications. The Social Housing Reform Act didn't exist. The rules about rent calculation were not fundamentally different; they just weren't codified.

What happens is, not every single tenant waits to get to court so they can have the ear of the judge. What happens is, every single social housing provider has to be sure that when they're going forward with their claim for eviction and it's based on arrears of rent or withdrawal of a subsidy, they'd better be sure that they complied with the law, because their decision is going to be subject to the scrutiny of an independent decision-maker, a third party. In this case, practically speaking, who should it be? It should be the board. If you make it judges on judicial review, you are going to, in the process of coming to that realization, see many people losing their housing, and practically, the taxpayers of Ontario will be hemorrhaging money, because it's the taxpayers of Ontario who are the social housing providers. This is all downloaded to the city.

Don't spend your money on judges to make these decisions. It's a complete absurdity, because these decisions have to bubble up somewhere in the system. There will always be these kinds of disputes. They will not overwhelm the system. It's about having accountability. When you've left the only person reviewing a rent as the landlord themselves, as well-intentioned as they are, there's no third-party scrutiny. That's what we're asking for. It should be the board. It was the courts before, and it did not overwhelm the courts because everybody behaved in a manner that resulted in these problems being resolved before you had to go and account, whether you were the tenant or the landlord. Thank you.

The Chair: Thank you. Unfortunately, you've exhausted your time. Thank you for your passion.

TIM ROURKE

The Chair: Is Mr. Tim Rourke here today? Great. Okay. Mr. Rourke, you're the next delegation.

Mr. Tim Rourke: I didn't think I was going to make it here in time.

The Chair: Welcome. We're glad you're here. I know you've been here before, so you know the drill. If you could indicate your name. When you begin, you'll have 10 minutes. I'll give you a one-minute warning. You have 10 minutes.

Mr. Rourke: I'm Tim Rourke. Here is my seven-point green paper about reform of the LRT laws. It's very

concise. I'll just re-emphasize the most important in here. What the tenants of Ontario need once again is what we had before 1998. We need impartial judges, not bureaucrats who know who they're working for or soon lose their jobs. One of your own adjudicators, Paul Debuono, can tell you about it more eloquently than I can. I gave the girl his piece in the green paper. I'm not going to print it; it's 48 pages.

Justice is expensive; injustice is cheap. The best way of keeping the workload of these expensive judges down is to have a cadre of rental inspectors as described herein. What a landlord and tenant dispute needs is an intervenor. The last thing needed is a mediator; mediation is not useful when there's an unequal power balance, as in landlord and tenant disputes.

The right to withhold rent to compel a landlord to do something or stop doing something is as fundamental to tenants as the right to strike is to labour unions. The monster created by the Harris government cannot be tinkered with; it needs to be buried 12 feet deep with a stake through it. That is the essence of what I have to say about L&T law on housing policy.

I printed up a few copies of a *Now* magazine article from 1986. I'll put them out when I get finished so that people have a chance of getting them before the tenant pimps grab them. The tenant pimp fraternity is famous for doing things like that and much worse. It's an auspicious time to be here talking to an Ontario Liberal government about L&T laws. It was exactly 20 years ago, 1986—

The Chair: Mr. Rourke, could I ask you to just speak into the microphone a little closer so they can—

Mr. Rourke: Is everybody hearing me?

The Chair: Just so they can hear you.

Mr. Rourke: Is everybody hearing me good?

The Chair: Yes.

Mr. Rourke: It was exactly 20 years, in 1986, when the last Liberal Ontario government introduced an atrocious act that caused people's rents to go up abruptly by up to 40%. They did this after talking to a committee of nine, appointed to represent the interests of tenants by the Federation of Metro Tenants' Associations, FMTA. Now, one member of that committee, Dan McIntyre, runs the FMTA. Another member, Leslie Robinson, was put in charge of picking the board of directors and then setting up the governing structure of the provincially funded Advocacy Centre for Tenants Ontario. A third member of that committee, Kathy Laird, is now executive director of ACTO. These two organizations have been able to stack these hearings. Supporters of these two organizations knew about these hearings a full two weeks before there was any effort by the government to advertise them, to solicit opinions on their proposed modifications to the tenant ejection act.

Excellent authorities on L&T issues, such as Bob Levitt and Dale Rich, were not invited to attend. I'm amazed I managed to slip through this. I have lawsuits going on right now against both ACTO and FMTA for defamation, harassment, wrongful arrest and other nice things, but I'm not here to talk about that.

I used the phrase "tenant pimp." Some people think this merely refers to people who set themselves up as fake organizers in order to grab money. It's more than that. In Toronto, all across the spectrum of social activism you see these fake groups being set up in order to brand themselves as the voice of some segment of society, especially ones who are very disempowered. The aim is to keep these social segments, like tenants, disempowered.

Tenants would be very dangerous if they were ever allowed to develop into a political force. So we have two poverty pimp organizations—one funded by the city, one by the province—to act as social police in the tenants' rights sector, preventing real tenants' organizations from developing, often by outright knee-capper methods.

ACTO sucks up hundreds of thousands of dollars of taxpayers' money. I or any of my friends alone could do a better job of advocating. All they really do is attack people. There are people who are effectively in hiding because of these people.

The province funds these people to come here and tell you what you want to hear. I've told you what you don't want to hear, I'm sure, which is the truth. If you want to know more about that, you can check out my own website, which can lead you to further websites; it's all in here. That is what I've got to say.

The Chair: Okay, we have about a minute and a half for each party, beginning with the government side. Does anybody on the government side have any questions?

Mr. Mario Sergio (York West): I have no particular question. I have enjoyed the presentation by Mr. Rourke, taking his time to come down here and make the presentation to us. But I have no question. I want to thank him for being here tonight.

The Chair: Okay.

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Ms. MacLeod: I just wanted, as well, to say thank you very much. We haven't had an opportunity to say thank you to the other participants because they went to the limit. On behalf of our side, I'd like to say thank you to all of you.

The Chair: Thank you.

Mr. Marchese: I just wondered, Tim, did you have a chance to read the bill?

Mr. Rourke: Yes, I've read it.

Mr. Marchese: Your main objections to it are—

Mr. Rourke: That it's there at all. It should not be just some modification of this thing that Harris set up. Just to reiterate again: Bury all that 12 feet deep. Drive a stake in it. Go back to what we had in 1998, where we had judges adjudicating this thing, and we can start from there. If there's some need to reduce the load on the judges, then some sort of a rental inspector, an intervenor, would be a very good way of doing that. But this is nonsense. It is exactly what people call it: the tenant ejection act, the eviction factory. What's being proposed won't change anything. It's no serious change at all.

The Chair: Thank you, Mr. Rourke. We appreciate your being here today. Thank you very much.

FRED JOSEPH

The Chair: Our next delegation is Fred Joseph. Is Mr. Joseph here?

Mr. Fred Joseph: Yes.

The Chair: You don't have a handout or anything tonight?

Mr. Joseph: I'm going to be providing one after.

The Chair: Great. Thank you. Welcome. I'm sure you've heard the beginning. If you could announce your name so Hansard captures it, and then you'll have 10 minutes. I'll give you a one-minute warning if you get close. The floor is yours.

Mr. Joseph: My name is Fred Joseph. First of all, I want to extend a very heartfelt thank-you, Madam Chair and the other members, for inviting me to speak here today about this issue of condominium tenancy in Ontario.

I am a condominium tenant in Toronto. I am also a mortgage broker. I deal with things like construction finance, tenants buying their first homes, landlords expanding their investment portfolios etc.

I've extrapolated from some data provided by government services in the past that in Ontario today we can safely assume that there are approximately 750,000 condominium units. I've extrapolated from additional data that we are probably looking at somewhere in the neighbourhood of 300,000 to 400,000 tenanted condominiums.

I can tell you from personal knowledge that there are many cases where you have four and even five people sharing space in a \$2,000-a-month condominium unit. Not only do you have a huge population in these condominium units when occupancy gets stretched to those levels but, the last time I checked, that is not exactly what would be called luxury living either. In fact, it's a huge constituency. Members, a huge electorate exists in these condominium units.

I'm here today to open your eyes to something that has flown under the radar for far too long and simply needs to be addressed for both landlords and for tenants. That issue is that in condominium tenancy, there must be created in legislation a definite distinction as to who constitutes the landlord of the residential unit versus who constitutes the landlord of the residential complex. The landlord of a residential unit cannot possibly control the entire complex in a condominium building unless they own over 50% of the units in the building. It's just that simple.

I happen to be very happy to live in a condominium complex with a unit landlord who is truly a good landlord. However, I happen also to live in a condominium complex in which my unit landlord is virtually powerless to control anything beyond the first panes of double glass on the windows, or behind the 3/4-inch sheetrock on the walls or behind the interior side of the outside layer of finish on my unit's door into the hallway. Most of what's beyond that, in terms of what I would regularly use as a tenant, is referred to as "common elements."

According to subsection 17(2) of the Condominium Act, "The corporation has a duty to control, manage and administer the common elements and the assets of the corporation"—"corporation," of course, referring to the condominium corporation.

We have a real problem here, members. If residential tenancy legislation is going to be effective for both condominium tenants and unit landlords, you ought to take condominium tenants out of the present legal abyss that we are in—and we're definitely in one. I don't want my innocent unit landlord to be dragged into courts and tribunals because I happen to have an issue with the condominium board, which happens to like to run the complex like it's the Wild West. No unit landlord should be dragged through the mud when a tenant's dispute is with the care and control of the common elements of the building, over which the condo board exercises 100% control. Right now, lawyers are standing on all kinds of technicalities to defend wayward condo boards.

The party line is that there is no "privity of contract" between the condo board and a tenant contracting with the unit landlord. So the condo board is, for all practical intents and purposes, off the hook. And as for the TPA, condo boards couldn't care less about the TPA. Every condo board out there firmly believes that virtually the only provincial legislation they need to know about and respect is the Condominium Act, and the Condominium Act is a real toothless tiger. So those same condo boards are just laughing under your noses right now, hoping, praying, in fact, that you wouldn't catch on, that you wouldn't wake up and that you won't make a change.

Enacting a supremacy clause into subsection 2(4) of the TPA didn't work. Lawyers found clever ways around it. Now, to enact one into subsection 3(4) of the Residential Tenancies Act won't work either. Let me tell you why throwing that supremacy clause into the new act will not have the effect of truly overriding the Condominium Act in cases of residential tenancy—three reasons in fact:

First of all, the conflict-of-laws issue between the TPA and the Condominium Act is anything but clearly resolved by the supremacy clause. A former Ontario Rental Housing Tribunal adjudicator who was hearing an illegal entry application brought by tenants against the property manager wrote—and I read verbatim—"Who is Prompton Real Estate Services Inc. to its tenants? If it was not the landlord and it was not an invitee, was it then a trespasser when its employees entered the unit in October and December? Unlikely, as they entered subject to their authority under the Condominium Act, 1998, and the bylaws of the condominium corporation." Then the adjudicator continues: "While I don't include this as a finding, it may be that the tenants have no remedy for such an entry and that this is a quirk and a gap that exists when we have a residential tenancy subject to the Tenant Protection Act wrapped up inside a complex, with individual unit-holders governed under the Condominium Act."

In a legal text I found entitled *Condominium Act, 1998: A Practical Guide*, widely available in publicly

accessible law libraries in Toronto, we find an interesting line, and again I quote this verbatim: "For the most part, residential tenancy issues do not affect the directors or managers of a condominium, unless the corporation provides a suite to a superintendent."

A letter which I received on October 21 of last year from a condo lawyer states the following: "You are mistaken in your position that the TPA overrides the Condominium Act. The obligations imposed by the Condominium Act override the TPA. There are several court decisions which reinforce this position."

Second of all, the litigation process that condominium corporations will force a tenant to engage in to try and extract a favourable ruling from the tribunal or the new landlord-tenant board will be anything but simple. The expeditious procedures clause in section 171 of the TPA and now continued at section 183 of the RTA, as well as the real substance clause in section 178 of the TPA and now continued at section 202 of the RTA, are a cold comfort to this menace. Ambrose Bierce may have said it best by stating, "Litigation is something you go into as a pig and come out of as a sausage."

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When the present tribunal is faced with deciding whether it can seize jurisdiction on an issue which is not spelled out in a point-blank fashion, especially a conflict-of-laws issue, the widely-held view of lawyers practising in landlord-tenant law with whom I have spoken on the matter is that such section 7 applications, as they are called, traditionally fail. That means a tenant must generally appeal to divisional court, and of course the condominium corporation, with much deeper financial reserves than a tenant, would obviously appeal an unfavourable ruling to the court of appeal. The cost to a tenant of carrying on such litigation can be summed up in one word: prohibitive, both in terms of time and money.

Finally, my condominium corporation, for one, made very sure that any redress—

The Chair: Excuse me, sir; you have one minute left.

Mr. Joseph: —that any redress I would seek against them would have almost definitely soured the good relations I had with my unit landlord. In fact, the condo board sent a letter to my unit landlord advising them that any legal fees incurred in what would effectively have been a defence against their own mischief would have been billed to my unit landlord. That's an outrage. To argue that my unit landlord has any effective control over the activities of the condominium board, by virtue of their 1/120 interest in the condominium, is an exercise in theoretical formalism. My unit landlord—a good landlord—has no more control over the management of the common elements of the condominium than a shareholder of Enron would have had over the activities of Enron.

What I am urging you to do, members, is to legislate in plain, specific language that there be privity of contract between a condominium unit tenant and the condominium corporation that controls common elements. Make condominium boards unequivocally subject to the

new legislation without the need first for incredibly complex and difficult test case litigation to get us there. Thank you.

The Chair: Thank you, Mr. Joseph. We appreciate you being here today.

Mr. Sergio: Madam Chair, can I have the presentation?

The Chair: I think he indicated he would provide it later on. It's in Hansard.

PINEDALE PROPERTIES LTD.

The Chair: Our next delegation is Pinedale Properties Ltd. Welcome. Is it Mr. Bookbinder?

Mr. Robin Bookbinder: Robin Bookbinder. I have a short speech which I've distributed, I think, to everyone. Then if there's time, I can do questions.

The Chair: Could you let me go through my preamble and then you can do your thing? If you could identify yourself and the organization you speak for, you'll have 10 minutes. If you get close to the end, I'll give you a one-minute warning. If you leave some time, we'll be able to ask questions.

Mr. Bookbinder: Fair enough. My name is Robin Bookbinder. I'm vice-president of Pinedale Properties Ltd., a company which has owned and managed residential rental properties in the greater Toronto area for over 50 years.

Current market conditions in rental housing have been the healthiest in Ontario in almost 35 years. Landlords have invested hundreds of millions of dollars. Our company alone has invested \$15 million in capital expenditures in the past five years. Tenants have more choice and better-quality accommodation, with landlords providing better customer service than has been the case in the past. It is under this backdrop that Bill 109 has been introduced.

As I have a very short time this evening, I would like to focus on one particular aspect of the legislation which I believe is ill-conceived and for which the ramifications have not been thought through, and that is section 82. Where a landlord makes an application to terminate a tenancy for non-payment of rent, section 82 allows a tenant "to raise any issue that could be the subject of an application made by the tenant." This is designed to presumably allow a tenant to raise perceived maintenance problems.

There are two fundamental flaws with this section. First, the system will lead to abuse and will be good for bad tenants but bad for good tenants. Secondly, the new Landlord and Tenant Board will be overburdened and could effectively collapse. I will address these two issues.

There are no parameters around how a tenant can raise any issue and have it deemed to be an application by the tenant. Principles of natural justice require that the landlord know the case they are to face. The landlord will be forced to request an adjournment, even though such a delay is the last thing they would want in a situation of non-payment. This section could also create incentives

for tenants to cause damage themselves and then present evidence of the damage at the tribunal hearing.

When Ontario's rental system rewards non-paying tenants by giving them opportunities for even longer delays, it is the good tenants who lose. In rental buildings, it is the good tenants who pay regularly and on time who will ultimately bear the cost of a system where non-paying tenants are rewarded with longer delays. This results in much greater bad debt losses, legal costs, fees and charges, which are ultimately borne by other tenants. There is no question that making it harder for owners to evict non-paying customers is quite unpopular with tenants generally. Most tenants pay their rent, are fair-minded, and do not support a system that rewards non-paying tenants.

This section also has serious ramifications for the viability of the new Landlord and Tenant Board. Coupled with the fact that all non-payment applications now go directly to a hearing, which itself doubles the new board's hearing workload, section 82 will massively increase the amount of hearing time required and the number of hearings required, and will be a major contributor to what will almost certainly be the effective collapse of the new Landlord and Tenant Board.

Since the objective of most tenants in non-paying situations is delay, this provision will foster that delay. It will also unnecessarily burden the tribunal with hearings and rescheduling. This section will encourage tenants to simply withhold their rent rather than to file a tenant's application if they have any dispute with the landlord, because they can then put the onus on the landlord to bring an arrears application and raise their dispute in response. Unilateral withholding of rent will result in unwarranted hardship for small landlords. Currently, adjudicators have the ability to respond to such tactics by telling tenants that if they have maintenance issues with their landlords they should file a separate application and demonstrate that they have a bona fide complaint and are not making a reactionary, tactical complaint.

As can be seen in the attached survey—a small survey—the process for eviction is already upwards of over 70 days on average in Ontario, which exceeds all other provinces. This will be further exacerbated by the operation of section 82 and could become a huge deterrent to being in the rental housing business, as owners will no longer be able to count on a relatively stable judicial environment in which to lawfully collect rents and earn the revenue necessary to operate their buildings.

The reality is, section 82 is unnecessary and should be deleted. Separate applications by tenants ensure that landlords will be aware of the case they are to face, and give tenants every opportunity they need to raise maintenance issues. Failing that, we believe that there should be a requirement on the tenant to notify the landlord prior to a hearing that they intend to raise an issue, and to identify the issue they are raising. This would give the landlord an opportunity to prepare for the hearing.

We would also like to see a requirement that the tenant pay any arrears into the board as a demonstration of good

faith. This would deter frivolous, unfounded or reactionary complaints.

Finally, there should be regulatory powers established under this section to allow the minister to put some parameters as to how this section of the legislation can be used.

That's my presentation. Thank you. If there are any questions—

The Chair: We have left almost a minute and a half for each party to ask a question, beginning with Mr. Hardeman.

Mr. Hardeman: Thank you very much for the presentation. I was just kind of taken by the issue of the eviction and that most tenants would be opposed to making it a longer eviction period because of the costs that would accrue to them. Yet as we go around—I was going to say “go around the province,” but that wasn't the case with this bill; it hasn't been going around the province. But as we had presentations to this bill, we have yet to hear a tenant come in and put that position forward.

Is there any—

Mr. Bookbinder: I don't think good tenants who pay their rent are all that interested in legislation, to be frank with you. I think they're interested in having good, decent accommodation that's clean at a rent that's fair. I can't speak to politically minded tenants. In surveys that we have, and generally in our position, 98% to 99% of our tenants are good. They pay their rent, no problem, and I think that's the case throughout. I don't think those people would like a system that rewards people who don't pay their rent.

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Mr. Marchese: Mr. Bookbinder, most landlords have made the same concern around section 82, so you're all unanimous in that regard.

Mr. Bookbinder: I don't know about that.

Mr. Marchese: I'm just saying it. Are there good things about this bill that you would like to comment on? What do you like most about this bill?

Mr. Bookbinder: I haven't looked at the bill thoroughly on every section. I know that one important aspect of the bill is not so much what it says but what it doesn't say. I know that we are pleased, as free market people who invest in real estate and realty property, that the government has allowed for the continuation of vacancy decontrol. As I said initially, we think that has provided an environment where both landlords and tenants have flourished, where tenants have had the opportunity to have decent—I'm answering your question. Give me a second.

Mr. Marchese: We don't have much time.

Mr. Bookbinder: Decent accommodation—I'll wrap up in a second, sir—good accommodation where landlords have invested hundreds of millions of dollars and where the general quality of rental properties has flourished over the last five or six years.

Mr. Marchese: What about the requirement of paying 6%—

The Chair: Thank you. I'm sorry; your time has expired. Mr. Flynn.

Mr. Flynn: I'm just wondering about the general process a smaller landlord might go through. Obviously, you're saying that most tenants in Ontario are good, most landlords are good, and everybody seems to be kind of focusing on where we get a dispute between either a good tenant and a bad landlord or a good landlord and a bad tenant. Assuming that I'm not a corporation, that I'm just somebody who's got a rental property and I run into a bad tenant I'd like to not have in my property anymore, is the process onerous to go through? Is the process fairly simple?

Mr. Bookbinder: I'm not involved in the legal day-to-day of that. In terms of research I have seen, it does take very long, as I've said here, for landlords to evict bad tenants. I think you have a situation that is difficult. The point I'm making here is that you're taking it and multiplying it by a considerable amount as to the 70-day average I have here, which could multiply another 30 days—who knows?—because of all that I've said here in terms of delays, rescheduling, landlords not prepared for tenant actions they can bring without notice, without knowing what they are. So as good or as bad as it may be for smaller landlords, for sure this is going to make it a lot worse. That's the point I'm making.

The Chair: Thank you very much for your time here tonight.

SOUTH ETOBICOKE TENANTS' ASSOCIATION

The Chair: Our next delegation is the South Etobicoke Tenants' Association, Patricia Smiley. Welcome. We have your delegation package here. Thank you for being here. Perhaps you could identify yourself and the group you speak for here for Hansard before you begin. You'll have 10 minutes. I'll give you a one-minute warning if you get close.

Ms. Patricia Smiley: My name is Patricia Smiley, and I'm the chairperson of the South Etobicoke Tenants' Association. Before I begin my comments on the legislation, I'd like to take the opportunity to tell the committee who we are and what our purpose is. In doing so, our following comments on the legislation itself might be better understood.

We formed last year, in 2005—we're still a very new group—to give private market tenants an organized and collective voice, first in advocating for fair laws governing relationships with landlords, and to assist tenants in dealing with their conflicts with those landlords.

While most tenants' organizations, associations, are building- or complex-specific, because of the nature of rental housing in south Etobicoke we chose to form an area-wide association. We've had financial and organizational support from LAMP Community Health Centre, the south Etobicoke legal clinic, and organizational support from Parkdale Tenants' Association, the Federation of Metro Tenants' Associations, and Albion Neigh-

bourhood Services, which runs the housing help office at LAMP.

Our area is that part of Etobicoke which makes up the neighbourhoods known as Mimico, New Toronto, Long Branch and Alderwood. The rental properties are, for the most part, smaller, low-rise buildings with fewer than 50 units. If you drive through this area and you see high-rise apartment buildings, they're either co-ops or condos. It doesn't apply to our membership. There are numerous apartments above stores, in duplexes, in basements, in small buildings with six to 12 units on side streets. The vast majority of those buildings were built in the 1950s. They are modest buildings. They were meant to house low- to moderate-income households, and for the most part, they still do house those who fall into that category. The better buildings have been well maintained over the years, but the wear and tear of the decades still shows. Many of our members have lived not only in the community but in the units they occupy for many years. I'm probably the newest member of that community after three years.

About Bill 109, I don't want to repeat what has been said by other tenants and their advocates. I would like to say what I've talked about with the tenants in the area, for the most part whom I know. I'm also not going to comment on the landlords' position. We are simply tenants who have had to fight and have perhaps become politicized over the situation with our landlords. I've heard landlords make claims to this committee, which I would ask you to disregard because they're not true.

These are the provisions of Bill 109 that most affect the tenants in this area, and they're specifically focused around above-guideline increases and evictions. First of all, above-guideline increases: If the new legislation has ameliorated some of the worst provisions, and allowed for above-guideline increases in the Tenant Protection Act—they're still allowed. We as tenants are wondering why. The principle of tenants who have paid rent to the landlords who own the properties for capital expenditures is simply unfair. Capital expenditures on aging buildings that prevent those buildings from turning into dumps that are on a fast track to becoming slums, which is happening, should be the responsibility of the landlord, not the tenants who pay their rent.

If this landlord can't afford to maintain either the individual units or the building as a whole, such that it is, so it remains a healthy and safe place to live on the basis of the rents collected, the amount of rents collected, that landlord can't manage what we have paid for. Our increases on rents are consumer-price-index based. With respect to a landlord being a consumer for repairs and the cost of those repairs and upgrades to these aging buildings, that's what they pay, but instead tenants are paying for them. We would like our landlords to be businessmen and to manage their businesses such that they reinvest capital as businessmen.

The most glaring example in the sections that outline eligible capital expenditures is deeming energy conservation a financial responsibility of tenants. We're not

objecting to the notion that all of Ontario wants to conserve energy; so do we. We recognize the vital necessity of energy conservation. We object to tenants paying for expenditures that will, in the long run, probably save the landlord money. Too many of us have experienced repeated breakdowns of furnaces that even if repaired properly leave us for hours—in a few cases I've heard of from our members—without heat. If a more energy-efficient furnace is installed and tenants pay for that new furnace through an AGI, it's the landlord, who in almost all multi-unit properties pays for heat, who will conserve energy and save money on heating costs. The same applies to paper-thin windows, inadequate and rotting electricity, worn-out plumbing, rotting wood in kitchen cupboards, missing tiles, endlessly and overly patched roofs, shaky foundations—all the things that happen to a building that's maybe at least 50 years old.

Evictions: We appreciate that there will be no more default orders for evictions and that there will be time for tenants to defend themselves appropriately and in front of the board. We also appreciate being able to void eviction orders by catching up with our rents. It may seem a small thing, but I would have hoped in the best of all possible worlds that an eviction order is not issued and then voided. I think this may be very problematic. An eviction order will be ordered, it will be voided, and ordered and voided and ordered. This could take up a lot of time with the tribunal. In a sense, it's essentially a waste of time. It's better than what we had before, but I think it could be significantly better than that. Obviously, the general hope is that there will be fewer evictions and the cruel stories of vulnerable children and seniors losing their homes and personal property will become history.

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We accept the basic obligations of tenants to pay their rent in a regular and timely fashion, and we are more than aware of the fact that there are tenants who wilfully damage property and break the law in their homes. It does affect us. The faster that crack house down the hall is closed, the happier we are. However, a landlord requires almost no proof that whatever damage has been done to the property was done by either a tenant or that tenant's invited guest. On the basis of that, on very little, a landlord can apply for and receive an eviction order. We're concerned that this will become a legal excuse for landlords to harass tenants they don't like.

As many of us live in buildings with six or fewer units, we are also concerned about the speed with which we can lose our homes if the landlord occupies one of those units. I can myself attest to how difficult it is to live with a bad landlord downstairs. However, we believe that the same rules should apply for all tenants, no matter what kind of a building they live in or where their landlord lives.

These are our major concerns. There are many problems associated with housing that can't be addressed by a single piece of legislation, and I would encourage the members of this committee to think about them, particularly those of you who are in the government party.

The reality is that most of us have no housing alternatives to the private market. We all know why; I don't think I need to say, particularly in Toronto. The rules of consumer choice do not apply to this particular market, and while we struggle with a long list of issues, we want to know that when we pay our rent we have decent, livable homes.

This bill has come faster than tenants and tenant advocates expected. We haven't had much time to digest and consider the various provisions or to prepare our comments. Debate in the House has been limited. I would request that you give more time to this bill before its third reading. Over the past several months, I have communicated, largely through e-mails, with tenants' associations in Guelph, London, Waterloo, Ottawa—mostly southern Ontario. As these hearings have been limited to Toronto, most of those tenants from other cities have had no opportunity to appear here. Please give any written submissions sent to you careful consideration. Thank you.

The Chair: You've left 34 seconds, which isn't enough time for me to offer anybody a question. Thank you very much for being here today.

MISSISSAUGA COMMUNITY LEGAL SERVICES

The Chair: Our next delegation is Mississauga Community Legal Services.

Mr. Harry Cho: Thank you, Madam Chair.

The Chair: Welcome. It's just you tonight?

Mr. Cho: Yes, ma'am. My friend Daniel Amsler has taken ill and regrets that he is unable to attend.

The Chair: We're sorry to hear that, but we're glad you're here. If you could say your name and the group you speak for. When you do begin, you'll have 10 minutes, and if you get close to the end, I'll give you the one-minute warning.

Mr. Cho: Super. Thank you very much, Madam Chair. I don't actually anticipate taking my full 10 minutes.

My name is Harry Cho. I'm a staff lawyer at Mississauga Community Legal Services. It's a non-profit corporation that provides free legal services to low-income residents of Mississauga. In seeing the speaker list, I can see that many of my colleagues and friends from various other legal clinics have already appeared before this honourable committee. I don't really want to waste anybody's time by reiterating things that we've already heard. Instead, I'll focus on the general purpose; perhaps I'll take a more holistic approach to tenancy legislation.

The Interpretation Act of Ontario, and I believe it's section 10, instructs us that all legislation in this province is remedial, in the sense that legislation is meant to correct either past injustices or perhaps past inequalities. Particularly with respect to housing legislation, the purpose generally of housing legislation is, I would suggest to you, to augment and protect security of tenure. The courts—and in fact a friend of mine, Mr. Harry Fine, who was a former adjudicator of the rental housing tribunal—

in speaking to the current Tenant Protection Act, and interpreting it pursuant to the Interpretation Act have held that the purpose of the Tenant Protection Act is to protect tenancies, to augment security of tenure. Notwithstanding some of the provisions that exist within the Tenant Protection Act, for example, the default provisions—I suppose this does speak somewhat to the efficacy of Orwellian titles—the Tenant Protection Act has been interpreted to protect tenants.

My friends and colleagues at the Kensington-Bellwoods Community Legal Services office have already explained that in all likelihood section 1 of the current Residential Tenancies Act will not be accorded the same type of interpretation. Viewing the legislation as an entirety, I am certainly inclined to agree. The legislation purports or seeks to prevent unlawful rent increases. It also seeks to prevent what are unlawful evictions. Certainly, the Tenant Protection Act has always sought to prevent unlawful evictions. Certainly, the Landlord and Tenant Act that came before the Tenant Protection Act sought to prevent unlawful evictions. What the current legislation does, however, is eliminate several safeguards that existed in the preceding legislation that I mentioned.

I'd like to speak specifically to the landlord's ability to seek an expedited eviction based on what we may refer to as activities that impair personal safety or activities that may result in the interference of the enjoyment of the property.

A number of the clients I represent before the rental housing tribunal appear with quite apparent mental health concerns. Under the current legislation, when I have appeared before the rental housing tribunal defending a low-income tenant who is facing eviction for activities based on her mental health concerns, we have in the past managed to, for example, void notices of termination and avoid hearings altogether by correcting the behaviour, by seeking assistance from our community partners in getting the proper medical treatment, the proper supports that are available. Certainly, when we meet with landlords and when we explain the context of the tenant's individual needs and when we recognize that the landlord doesn't want an empty unit and the tenant wants to remain housed, there is always some common ground that we can reach. As it stands today, the Tenant Protection Act provides us with some opportunities to meet that middle ground; that is, we can create a plan to correct the behaviour, to ensure that the enjoyment of all people will be respected and will continue throughout the tenancy.

What this does, when we are able to resolve matters without attending the tribunal, is relieve a great deal of hardship on both, I would suggest, the tenant and the landlord. Let's face it: Nobody likes to appear before courts. Whenever you get lawyers involved, I think everyone has basically lost. I think it is far better if we can, through the provisions in the legislation, work toward resolving matters without needing to fight it out before what is oftentimes a very intimidating and quite

ominous venue. So that's certainly one area in which we have a concern.

Another speaks to, of course, the rules relating to rent. This government was elected on a promise that nobody would be left behind. That was really something that resonated with Ontario voters. There was also the promise, of course, to reintroduce rent controls. I don't need to review what the current legislation has done with respect to the reintroduction of rent controls.

One of my concerns is the guideline increase that is indexed to the consumer price index. The vast majority of clients we represent in the legal clinics are recipients of social assistance. Certainly, their benefits are not indexed to the consumer price index. My salary is not indexed to the consumer price index, I know very few people whose salaries are. What this, in effect, represents is free money for the landlord—free annual money for the landlord that will every year, year upon year, result in higher rents. These higher rents, we foresee, will inevitably lead to economic evictions. Once these units have been vacated, the landlord can then raise the rents to whatever the market may sustain. Unfortunately, that market does tend to leave behind the people whom we in the clinics represent—the people on fixed incomes, the people on social assistance and people on ODSP. Again, this is a large percentage of the population, an entire swath that is in effect being left behind by this legislation.

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So I guess what I would encourage the government and my friends in the opposition to remember is, really, the general principle that no one should be left behind. No one party has a monopoly on compassion. I would really encourage all parties to take a good, hard, long look at this legislation and to keep in mind the principles of the Interpretation Act when they do take this proposed act to committee.

The Chair: Thank you. You've left exactly a minute for everybody to ask you a question, beginning with Mr. Marchese.

Mr. Marchese: Thank you very much. One of my biggest concerns is vacancy decontrol. That's the promise the Liberals made; they said they were going to deal with that. They obviously kept it here, and the landlords are very pleased with that. I think that's a big problem for tenants, because landlords take advantage of that. Quite naturally, if someone leaves, you're going to jack up the price as much as you can, and they have. Even where vacancy rates are very high or low, rents have gone up. So it's a big concern for me. How big is that concern for some of you in the field? Because you talked about it a bit.

Mr. Cho: Certainly. Thank you, Mr. Marchese. I've been acting for a rather large residential complex in south Mississauga right by the lakeshore on Front Street. It is a building occupied primarily, I would suggest, by senior citizens who are on old age security, Canada pension plan, things of that nature. There have been a number of turnovers in the management of that rental complex. The

most recent management has in the last few years undertaken significant capital improvement projects, I guess the legislation would call them, seeking above-guideline increases. Some of these projects are of a questionable nature, replacing, for example, gym equipment, things of that nature. They have claimed for these things before the Ontario Rental Housing Tribunal to augment rents and to gain above-guideline rent increases. The purpose of all this, of course, is to raise the rent to the level where current tenants are unable to afford the rent. Whether it be a rapid process through above-guideline increases or whether it simply be through the guideline based on the CPI, rents will increase; unfortunately, incomes often do not.

The Chair: Thank you. You're going to have to wrap it up, make it a shorter answer.

Mr. Cho: The ultimate end of this, of course, is to get the empty unit so that—

The Chair: Excuse me. You have to really shorten your answer because no one is going to get to ask another question. Can you wrap it up?

Mr. Cho: Certainly I do agree, because the purpose of this ultimately is to get the unit empty so that they may charge whatever rents the market can sustain for whoever may wish to move in. Unfortunately, that does make it hard for those who live in poverty.

The Chair: Mr. Flynn.

Mr. Flynn: Thank you, Mr. Cho, for the presentation. I thought it was very well balanced. In seeking some balance in the legislation, you cited some examples where perhaps somebody has acted out of character and that has led to an eviction, and somehow you've been able to intervene on their behalf or to get assistance and that situation has been able to right itself. How do you bring in legislation that would cover that circumstance? A previous speaker said tenants want the crack house at the end of the hall out of there as soon as they possibly can. How do you bring in legislation that allows you to do the intervention that works and yet still allows for the quick removal of someone who is just a pain in the rear to every tenant in that building?

Mr. Cho: Thank you very much, Mr. Flynn. I certainly am sympathetic to the landlords and to the other tenants who reside in a residential complex when these problems do arise. My friends who do appear with me at the Rental Housing Tribunal know that I am quite pragmatic in my approach and that I am not as political as some may be.

I think, however, this really is a matter of balancing competing interests. Where we lose sight of the needs of the individual who may suffer from a mental health impairment, for whom something such as the Human Rights Code shall and must apply, I would suggest to you that incorporating the principles of the Human Rights Code where a landlord must accommodate a disability to the point of undue hardship would offer one of those balances of the competing interests of the general population of the tenants to that one crack house in the corner.

What I'm picturing here is not the crack house environment—

The Chair: Mr. Cho, I'm sorry; you're going to have to make your answers really short. You've really doubled your time. Is there a quick answer you can give Mr. Flynn, because I've got to go on to my next—

Mr. Flynn: Do you know what? I think I understand what you're saying. Thank you very much, Mr. Cho.

The Chair: Ms. MacLeod, you have a minute.

Ms. MacLeod: Thank you, Madam Chair. You're running a tight ship here, and we're all appreciative.

The Chair: I'm trying to.

Ms. MacLeod: Harry: great presentation, very fascinating. I'm glad to see you're pragmatic about everything. You mentioned potential impacts of this interpretation by the judiciary on the purpose of the act changing the name from the Tenant Protection Act to the Residential Tenancies Act. I would like to know what direct impacts you would foresee with the name change.

Mr. Cho: Certainly the courts and my friend Mr. Fine have held that the purpose of the act is to protect tenancies and that eviction is a remedy of last resort. In the absence of a strong purposive clause to that effect, it is my fear that evictions will no longer be the remedy of last resort.

Ms. MacLeod: What's your recommendation?

Mr. Cho: My recommendation is to rewrite the purposive clause to indicate that the purpose of this act is to augment and protect security of tenure.

The Chair: Thank you very much.

Mr. Cho: That was short.

The Chair: Yes. That was much better. You had a good questioner, I noticed.

LANDLORD'S SELF-HELP CENTRE

The Chair: Our next delegation is someone who has been referred to earlier: Mr. Fine, from the Landlord's Self-Help Centre. Welcome.

Mr. Harry Fine: Thank you. I could have sworn I heard Mr. Cho say he was going to give up some time to us.

The Chair: I didn't hear him say that at all. Thank you for being here tonight. If you're both going to speak, if you can give your names for Hansard and the group that you speak for. You will have 10 minutes. I'm going to hold you to 10 minutes, and I will give you a one-minute warning if you get close to the end.

Mr. Fine: Thank you. My name is Harry Fine. I'm a paralegal looking forward to paralegal regulation. I'm the president and owner of Landlord Solutions, a company doing work for landlords and, occasionally, tenants at the tribunal and small claims court. I'm also a member of the board at Landlord's Self-Help Centre, and I'm here tonight speaking on their behalf. I also teach landlord-tenant law at Humber College and at the Toronto Real Estate Board, the Mississauga Real Estate Board, the Ontario Non-Profit Housing Association, etc.

Beside me is Glenn Sheridan. Glenn is one of the principal people at the Landlord's Self-Help Centre. He is there as a community legal worker, and he interacts with the community small landlords every day. I'm going to start by turning it over to Glenn to give some context as to what our organization does.

Mr. Glenn Sheridan: Good evening, and thank you for the opportunity to speak to the committee regarding these changes. I'm a community legal worker from Landlord's Self-Help Centre. Hopefully the following information will underscore the difficulties that small-scale landlords already face with the existing legislation and why any changes that are made should be fair and practicable.

At our centre I'm one of four legal workers who provide our client community with summary legal advice, information, referrals and, sometimes, document preparation. We do not provide legal representation for landlords; we leave that to people like Harry. This advice ranges from basic issues such as screening tips and how to complete eviction notices to more complex and frustrating situations such as drugs in the tenant's premises or the futility of attempting to collect amounts owing from an order when a tenant is actually on assistance and the landlord cannot get the money.

The centre is a specialty legal clinic and the only one that provides services exclusively to Ontario's small-scale landlords—approximately 10,000 enquiries every year. Our clients are generally small-scale landlords, commonly referred to as the secondary rental market. This market represents approximately 40% of private rental housing providers in Ontario. In Toronto, this is about 15% to 20% of the rental housing stock. Rents charged in these units are generally 20% lower than in units in larger rental properties.

These housing providers are typically not professional landlords. They may be small-scale real estate investors or entrepreneurs, but most times we find that they are people from low-income families, seniors and recent immigrants often possessing little or no property management skills or experience. Many have purchased a single-family home or small investment property such as a duplex or condominium unit, while others simply rent a flat, basement unit or so forth in their home in order to subsidize the cost of home ownership.

It's rarely acknowledged that language issues and a lack of familiarity with the tribunal system are huge barriers to access justice for both tenants and landlords. The difference is that there is a great deal of support and resources available already to tenants to help bring them up to speed. This support comes from the tribunal, legal aid clinics and the tenant duty counsel program, as well as other community organizations.

Judging by the feedback we get from our small landlord community, the experience of going through the tribunal simply allows no room for error on their part and often results in unfair delays, dismissal of their application, or worse, an order that has no way of being enforced.

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This bill seems to make specific provision for the small-scale landlord in section 65, and we applaud this recognition; similarly, the undertaking to reduce fees for above-guideline increases, which at \$500 is currently just too prohibitive for small landlords.

Our centre will shortly provide a written submission outlining our comments and concerns when we get the time to complete it—our small staff—on such issues as removal of the default eviction process; allowing tenants to raise claims on applications filed by a landlord—it has already been mentioned while I've been here tonight; smart meter issues; the potential to limit small claims court remedy created by section 88; also, the expansion of the definition of "tenant."

We urge the committee to recognize that there are a large number of obvious disincentives to renting faced by the small-scale landlord, and that the vacuum created by many of these landlords getting out of the renting business must logically be filled by either the larger private sector landlords charging higher rents or the creation of publicly funded housing.

I'd like to hand over to Harry to complete.

Mr. Fine: Legislation by its nature needs to be, or tries to be, a one-size-fits-all approach, and often it doesn't work. There's almost no similarity between the constituencies in rental complexes operated through ONPHA members, for instance, or by the Landlord's Self-Help Centre, versus a Greenwin building. They're different animals. In our constituency, through the Landlord's Self-Help Centre, they are different. They're emotional, they're difficult and they're often messy. Small-scale landlords, as we deal with every day, don't have the resources, don't have the training, and often not the knowledge to deal in the complex, highly regulated environment that is currently the Tenant Protection Act and soon will be the RTA. Both section 183 of the TPA and section 171 of the RTA call for an expeditious process without sacrificing fairness. The courts have recognized that the process needs to be expeditious, that common law has recognized that we're dealing with summary matters that should be dealt with quickly and fairly, that speed does have some special meaning in landlord-tenant law.

Our constituency of small landlords makes up about 40% of the private rental market. I think they'll be the hardest hit by the types of changes in the RTA. It is so complex, time-consuming and highly procedural to achieve a remedy to the tribunal today. I'm very busy in my work, but small landlords have an impossible time. Landlords lose their homes as they can no longer pay mortgages because the rents aren't coming in. The cumbersome system permits tenants who, oftentimes—sometimes, certainly—are confrontational, aggressive and sometimes even violent, to remain in a unit for months, sharing a common laundry room, sharing a common deck or outside lawn with a landlord and their family in situations that boil over into confrontations. So often the police are called and the police say, "It's a tribunal issue.

Go through the tribunal.” There’s a fine line and that’s the way the police get their training. The truth is that some of these matters go on for six months and the situations are explosive.

It’s ironic that legislation such as this, and even the TPA prior to this, in discouraging small landlords from staying in the business will ultimately, ironically, affect the poor, create more homelessness, because it’s those people who are on social assistance who are most often in basement apartments. So many of my landlord clients, after we’ve gone through the process, say, “I will never rent again.” What will happen to this 40% of the private rental market when they can’t find cheaper rents in basements of houses, in a small triplex?

I also foresee terrible backlogs with the implementation of the RTA, for two reasons primarily. The elimination of the default order process is going to create enormous backlogs; 50% of all arrears applications are resolved currently by default. Having every one of these go to a hearing and be resolved through questioning and evidence, and the adjudicator having to make notes and write down his decision—those things take time. I know that because I was there. I don’t know that the government is planning to put in the resources that will be required to handle an increase in workload of probably 20%, 30%, 40%.

Adding to that increase in workload, of course, is section 82, which you’re hearing about from all landlords here at this process. Section 82 is problematic in so many ways. First of all, it flies in the face of the principles of natural justice that say the respondent has a right to know the case to be met. Respondents will not know the case to be met, so they have one of two choices: They can continue and defend the action, defend the maintenance action, because they don’t want an adjournment—and they’ll get one. If they ask for an adjournment and say “I’m being ambushed,” they’ll get an adjournment of one month, and during that one month, they’ll get no more rent for that period. So landlords may decide, “I’m here. I don’t want the adjournment. I’m going to try to defend the maintenance application.” Of course they’ll do it badly.

The Chair: Mr. Fine, you have a minute left.

Mr. Fine: It is questionably contrary to all the principles of administrative law, and it flies in the face of natural justice.

A typical arrears application takes three months to get through the system, and that’s three months from the time the landlord serves the notice. If the landlord waits two months, hoping, listening to promises, accepting guarantees from tenants: “You will get your rent, you will get your rent,” it can easily be five months or \$5,000 before the landlord finally gets an eviction through the sheriff. At that point, there’s no guarantee of getting any funds, again because so many tenants in small tenancies are getting ODSP or OW. You cannot garnishee. The ODSP or the OW set out that you can’t get money from tenants on social assistance, so the landlord has lost \$5,000 that he can never recover.

Section 63 of the bill, the provisions for wilful or serious damage, supposedly fast-tracking: It’ll never happen. Landlords won’t make applications under section 63. They’ll be frightened to, because an application under section 63 can be so easily dismissed if the adjudicator says, “I don’t think that that’s an application that should have been made under section 63 because it’s not serious or wilful enough. You should have made it under section 62; therefore, the notice is defective. It had 10 days rather than 20. You have to re-serve, refile and repay the ministry your money for another application.” There’s no threshold set out—

The Chair: Thank you, Mr. Fine. I’m sorry. You’ve exhausted your time. I know we’re going to be getting another written document as well. Thank you very much. You’ve been very helpful tonight.

Committee, just so you know—I think I mentioned it earlier—the Coalition of Residential Care Facility Tenants cancelled earlier today.

DAVID PIASECKI

The Chair: Our next delegation is David Piasecki. Have I stated your name correctly? Have I pronounced it properly?

Mr. David Piasecki: Yes.

The Chair: Great. Could you state your name for Hansard before you begin. When you do begin, you’ll have 10 minutes. I’ll give you a one-minute warning if you get close. If you leave some time, there will be a chance for us to ask questions.

Mr. Piasecki: My name is David Piasecki. You’ll have to pardon my presentation. I was just informed this afternoon, if I was willing to attend. When they called, actually I was in the midst of a two-hour meeting with my mother and a caregivers’ association. I really didn’t think I was going to be called, so I’m going to do the best I can on such short notice.

I’ve read over some of the proposals on the new act. I’m here under another reason, and that’s an area that has not been addressed. I want to take this opportunity to address this panel on this because it’s a matter that I feel—not myself; many landlords I’ve spoken with—is of significance because if it’s not addressed, all these proposals have no meaning. The brunt of what I’m getting down to talking about is that there is a problem with the tribunal itself in regard to the whole process with the adjudicators, the discretion that is given them.

Another area that I’m going to address very quickly and briefly is the matter of the recordings, or the lack of recordings, that the tribunal supplies for hearings and the inability, because of the poor recordings and lack of recordings—it is totally unfair for landlords and tenants alike in order to pursue a review and possible appeal of issues that are being decided before an adjudicator. For example, if one is not at all happy with the decision of the tribunal adjudicator, of course, one can go for a request to review.

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The request-to-review process in itself is something that has to be addressed. First of all, the problem with the request-to-review process, as I've found out and as many landlords have found out, is that it goes to another adjudicator within the same office, so there is a lack of independence. This review process should be conducted with a greater independence between the reviewer and the decision-maker. What I'm suggesting is that it's just too close. You pay the \$75 and as a matter of fact, for example, in one recent case, a 10-page, single-spaced request for review, the adjudicator whom that was given to in the same office was going to give a decision on that request to review within five minutes, and then there was the second thought that maybe it looked too obvious. That's one part I wanted to address.

I want to address this area of the lack of recordings. Many landlords harbour the perception that members of the tribunal under the TPA are not adjudicating the disputes properly. A landlord's recourse is obviously to lodge an administrative review, and ultimately to the Divisional Court. Oftentimes the tribunal is unable to provide recordings of the proceedings because the recordings are either incomplete or missing.

This lack of recordings will prevent proper review of tribunal decisions in many cases. In order to have a more efficient administration of justice at the tribunal level, it would be beneficial to have the tribunal record the proceedings in a better manner. Staff at the housing tribunal should be encouraged to take better care of recording disks. In order to ensure that the parties to a dispute are dealt with fairly, the tribunal should be encouraged to record the hearings properly and to archive the recording disks efficiently to minimize loss.

The best way to encourage these changes would be to amend the TPA and the rules and regulations to encourage better recordings and archiving of the recordings. A few changes in this direction would create an environment where tenants and landlords would have greater faith in the adjudicative process of the TPA. The lack of complete recordings oftentimes prevents a litigant from advancing an appeal and undermines a proper review of the decision, and possibly finding out whether or not the member of the tribunal is acting in an unbiased way. Really, it's difficult to advance errors in evidence.

Another area: What are referred to as the guidelines and the rules that the adjudicators follow basically allow very large discretion of the part of the adjudicator to put down fines and costs. It's just too broad.

I was referring to the rules and regulations of the tribunal. Rule 21.1 should be amended so that recordings are mandatory and every effort will be made to provide good and complete recordings.

Originally, I was compiling a much larger presentation in written form that I was going to present to the Minister of Municipal Affairs and Housing and also a copy to the Attorney General's office. With the timing of this panel, I thought maybe I would come forth. I've gone into much greater documentation that shows exactly the cases that

happened where there has been such unfairness to landlords and tenants because of this inability to advance errors in law because of the lack of recordings. It really has just become a joke.

I basically wanted to address quickly the discretion that adjudicators are given. Adjudicators have to be made more accountable for their actions. Another problem is that we found out that some adjudicators are not even familiar with certain types of housing. Take, for example, a rooming house type of residence. They are not at all familiar with that type of housing and how it works.

The Chair: Mr. Piasecki, you have one minute left, just so you know.

Mr. Piasecki: Section 35 of the Tenant Protection Act gives far too much power to adjudicators. It's an area that should be amended because they use their utmost power—there's just too much discretion. Without really going into documentation, I have difficulty going further, but I will forward my documented case to the Minister of Municipal Affairs and the Attorney General.

The Chair: If you'd like to, you can submit your written submission by June 5. That's our deadline for this committee's work before we go to clause-by-clause. So if you can get it to this committee by June 5, that would be the deadline for this committee.

Mr. Piasecki: Thank you. I apologize for this—

The Chair: Don't worry. We're pleased you came. You did a great job.

Mr. Piasecki: I had a half-hour of preparation.

The Chair: For somebody who didn't have a lot of time to prepare, you sounded quite eloquent. Thank you very much for being here.

STRATACON INC.

The Chair: Our next delegation is Stratacon Inc., Mr. Mills.

Mr. Ian Stewart: Actually, Mr. Mills can't be here this evening.

The Chair: Okay. Welcome. If you could identify the company and your name so Hansard has it, you'll have 10 minutes.

Mr. Stewart: My name is Ian Stewart and I'm president of Stratacon Inc. Stratacon is a leader in the space of smart submetering in the multi-family sector. We're currently metering and billing thousands of tenants across Ontario.

What I'd like to focus on this evening is section 137. Although it's well intended, I think that in its current form it will most assuredly halt the proliferation of smart submetering in the rental sector and may well cause the Legislature to miss the Premier's stated goal of installing over 800,000 smart meters by 2007, and maybe more importantly, I think perhaps one of the biggest opportunities for conservation in the province will be lost in terms of submetering in the multi-family sector.

I know time is short so I prepared a very brief presentation for you. Essentially it outlines the issues as we see them, as well as the issues that we hear from our

clients, who are apartment building owners and management companies.

One of the key points to recognize is that about 15% of the existing rental building stock in Ontario is already separately metered and was so since the suites were built over 35 years ago. I've made presentations to both members from the Ministry of Housing as well as the Ministry of Energy and at every turn this is always surprising to them, that 150,000 to 200,000 suites in the province are already paying electricity bills and have so for the last 35 years. I think it maybe speaks to the issue that, absent complicated government regulations and rules, it's natural for Ontarians to want to conserve a scarce resource and natural for Ontarians to be rewarded when they choose to be mindful of a scarce resource. The fact that it has flown under the radar screen of ministry officials for 35 years really speaks to that point.

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For the balance of the suites, 85% of the building stock, it is not separately metered and the cost of electricity is embedded in the rent. What it gives rise to, of course, is that residents have no clear incentive to conserve electricity. Submetering the 85% of existing building stock in Ontario would translate into roughly 350 megawatts of electricity savings. More importantly, about 140 megawatts of those savings would be incurred in the city of Toronto, where it's needed most.

In terms of submetering, what we do is place meters past the bulk meter such that we're recording in-suite consumption accurately at each resident's suite. Every smart submeter that's installed is, of course, Measurement Canada approved and sealed for accuracy. The rates that a typical submetering company charges to each resident tend to be about 30% to 40% less than what a traditional LDC would charge those same residents in the 15% of suites that are presently directly metered.

In every case we've looked at, and indeed across about a million suites I've looked at in other jurisdictions, consumption at the bulk meter tends to drop between 15% and 25% immediately after folks start to become bill payers. We think it's literally the quickest, easiest and fairest way of conserving electricity, particularly in Toronto.

The next slide really shows why submetering will benefit the majority of tenants. If the resident is given a fair rent reduction, the majority of residents would probably be below the rent reduction out of the gate. The slide you see shows a gas-heated building, so it has nothing to do with whether the suite is located on one side of the building or the other and nothing to do with weather; it's simply lifestyle choices. You see at the top that we have Suite 802, which in the month of January consumed \$58 worth of electricity, yet Suite 501 used \$1.76 worth. This is pure lifestyle choice and one of the reasons why submetering offers tremendous opportunities for conservation.

In terms of what we see in section 137 as barriers to conservation, it really starts at clause 3(b). We believe, as do our clients, that rent reductions should be based on

current in-suite electricity costs and should not include future related costs.

Another barrier would be in subsection (4), where it suggests that meters should be installed for a period of 12 months or longer. We believe this to be excessive, particularly in buildings that are gas-heated, where there's no issue vis-à-vis weather, and that three months or less should be more than ample to document a proper and fair rent reduction to each residence. If, for whatever reason, that formula spits out a bad result, clearly there should be a true-up mechanism in place for those buildings and that can be corrected. We think that waiting 12 months with meters in place and no clear way to finance them would not be needed and would be excessive.

Subsections (5) and (6) require that a building owner share in-suite consumption patterns with a prospective resident. I think there are certainly privacy issues in play. For the 15% of the building stock that is separately metered by the LDC, the building owner won't and hasn't had access to that information for the last 35 years, so they clearly would not be able to share it. I'm also concerned what it would say to a prospective tenant if the family that moved out had six children and the new tenant was a single occupant. I'm not sure that their consumption would be that indicative of what the new resident might be expecting to see in that particular suite. It may be more practical to use a building average as opposed to the consumption that was occurring in that particular suite.

Subsection 137(7): If a landlord does install new appliances, I think it's reasonable and certainly practical that they put in an Energy Star appliance that is energy efficient. However, I'm not sure, and don't think it's at all reasonable, to suggest that a building owner now be forced to put in an energy-efficient appliance, especially in those cases where residents have been paying their utility bill for the last 35 years.

Subsection 137(8): We saw in the previous slide that lifestyle choices more than anything generate high utility bills. But should a resident have a high utility bill, I'm not sure their first choice should be the ability to go to the tribunal with an application. I think the tribunal would be overwhelmed with cases. In our opinion, and I think in the opinion of our clients, the first thing they should be looking at is things they can do within their suite to minimize their hydro bill. Certainly at Stratacon, with our client base, we're constantly offering, through our website or through bill stuffers and handouts, little tips and suggestions on simple things any resident can do to minimize electricity usage.

I'm joined by my colleague Paul Brown, casually dressed, right from the golf course, who wanted to be here.

Mr. Paul Brown: I apologize. I was with the Power Workers' Union today and we got rained out. This is the only garb I have access to.

I guess Ian has made most of the points from our point of view as the leading submetering company.

The Chair: Gentlemen, you have just over a minute, just so you know.

Mr. Brown: If I cut it down to the main message, unless changes are made to the current drafting of the bill, there will be no smart metering of a million apartment units in the province of Ontario. The provincial government will fail to meet its objective of 800,000 smart meters by 2007. It will not happen, and the conservation goals that all parties in the Legislature have set will not be achieved. The only way to do it is to smart-meter individual units, and under the current drafting of the legislation, it will not happen. We have a letter from just one of our customers, which we'll make available. It's very direct and quite clear as to what they'll do, how they're reacting. These are people who have recently signed agreements with us to smart-meter, and when they read the wording of the legislation, they said, "We will not move forward."

The bottom line, also, is that there are not huge differences—

The Chair: I'm sorry, but you've exhausted your time. We appreciate your being here. Thank you.

Mr. Stewart: Any questions?

The Chair: Unfortunately, you've used your time, but thank you for your slides. That's great.

LARRY FASERUK

The Chair: We have our last delegation: Mr. Larry Faseruk. Welcome. We've saved the best for last. Thank you for being here. We are anxious to hear your presentation. You're just speaking for yourself tonight; you're not speaking for an organization?

Mr. Larry Faseruk: Not for an organization.

The Chair: Great. Could you say your name for Hansard, and when you begin, you'll have 10 minutes. If you leave us some time at the end, we'll be able to ask you questions. You can begin when you're ready.

Mr. Faseruk: My name is Larry Faseruk. Thank you for allowing me the opportunity to address the committee today. Bill 109, like its predecessor legislation, lacks any safeguards for a very vulnerable segment of the population, to wit, post-secondary students. As a father of two post-secondary students, I have first-hand knowledge of the plight of post-secondary students, and I'm making this presentation as an advocate for this vulnerable segment of society.

Very often, this segment is at the mercy of landlords who charge very significant rents, and the students are facing systemic discrimination in the procurement of rental housing. In many cases, the housing that students can procure is substantially below the property standards of the community in which it is situated.

First I'll deal with the systemic discrimination that students face when trying to procure adequate housing for their student years. No one will doubt that the leaders of tomorrow are the post-secondary students of today. In certain college towns, landlords are notorious for saying, "We do not rent to students." Hence, students face dis-

crimination in obtaining housing. The current bill does not address this point, but makes provisions to allow this discrimination and therefore exempts this discrimination from a human rights complaint, as it is discrimination that is allowed by statute.

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Let's examine section 10 of Bill 109: "In selecting prospective tenants, landlords may use, in the manner prescribed in the regulations made under the Human Rights Code, income information, credit checks, credit references, rental history, guarantees, or other similar business practices as prescribed in those regulations."

This legislation is a very thinly disguised piece of legislation that allows landlords to discriminate against young, first-time renters, especially students. When students usually require rental housing, it starts with the second year at a post-secondary institution when they are only 18 or 19 years old. How many 18-year-old and 19-year-old students or workers have any credit history for a credit check, a credit reference or any rental history, for that matter? The only rental history they can offer is one year at a university/college dormitory without any assessment of fines or damages.

This year, my daughter required a guarantor because she is a student. If she were not a student, then a guarantor would not be necessary, which results in discrimination against students.

If this was not enough, then Bill 109 goes on, "or other similar business practices as prescribed in those regulations." This bill makes it very easy to allow discrimination against students when they attempt to procure housing.

It has to be acknowledged that all components of buildings have a finite span of being useful and eventually have to be replaced. When a person wants to be in the business of providing rental accommodation, that accommodation must initially meet the property standards of the community and continue to meet those property standards throughout the time the building is used as rental accommodation. Otherwise, the safety of the tenants may be at risk. If one acknowledges that eventually all of the components of the building have to be repaired or replaced, then the costs of maintaining the building against normal wear and tear should be factored into the rent.

Bill 109 allows a landlord to treat all the income from the ongoing rental as profit when a portion should have been set aside for major periodic repairs, such as a new roof or heating system. Section 126 of Bill 109 allows the landlord to treat all the previous rent as profit and allows the landlord to neglect the maintenance of the building and then allows a rent increase to pay for those periodic repairs. Major periodic repairs have to be considered as a cost of doing business and not an extraordinary expense.

On section 126, I want to concentrate on clause (b), "it is necessary to comply with subsection 20(1)" Subsection 20(1) deals with maintaining property standards to allow it to be in a habitable state.

This leads to several disgusting scenarios. First, under Bill 109 the landlord is not required to disclose to a

prospective tenant that upcoming repairs are necessary and that these repairs may constitute “capital expenditures” under section 126, which means unexpected rent increases. The most odious is clause 126(b) as it allows as capital expenditures the costs of keeping the property up to the standards of the community as per subsection 20(1). This will lead to tenants who will not complain about property standard violations as it will lead to rent increases. Hence, Bill 109 is a prescription for the creation of slums.

Since students face statutory-allowed discrimination, they are forced to rely on landlords who will rent to students. In college towns, these landlords usually own buildings that are adjacent to or in close proximity to the post-secondary institution, which coincides with the preferred area of habitation for the students. This leads to the formation of a student ghetto and, in many cases, a poorly maintained student ghetto, and section 126 of Bill 109 will aid in the formation of the student ghetto.

Does a student ghetto exist in Canada and does a ghetto have to exist? As one approaches Cornell University, one has to drive through a section of Ithaca, New York, known as College Town. This is a trendy little section of Ithaca, high on the hill overlooking the town.

When one approaches Queen's University via Division Street, one has to drive through an unholy halo of undermaintained buildings, known locally by generations of Queen's students as the Ghetto. This does nothing of any value for the city of Kingston. It is commonly known and accepted that Queen's aspires to be the Harvard of Canada. Perhaps Kingston should aspire to be the Cambridge, Massachusetts, of Canada. Cambridge, Massachusetts, is the city in which Harvard is located, and there is a strong set of bylaws to protect buildings of significant age. Most of the Ghetto in Kingston dates back well over 100 years.

How bad is the Ghetto? It is so bad that the Queen's student council, known as the AMS, the Alma Mater Society, has introduced an anti-award known as the Golden Cockroach. This award is described by a quote from the student newspaper: “‘The Golden Cockroach Award was born of necessity, not desire, due to the deplorable conditions too many students are currently living in,’ said AMS President Ethan Rabidoux, who made the presentation with Acting Municipal Affairs Commissioner (MAC) Ryan Quinlan Keech. ‘The pictures and the stories we will tell you are deplorable—well, in fact, they are funny, screamingly funny until you realize people are living in these conditions.’”

That's from the Friday, February 10, issue of the Queen's Journal, and the full text is attached as appendix 1 to this.

It may be easy to say that the deterioration in properties is a recent phenomenon and can be corrected shortly. When my brother was a student at Queen's from 1973 to 1977, the area around Queen's was known as the Ghetto and had the same neglected look as it does today.

In addition to many of the buildings being undermaintained, there is another type of problem if the building is maintained at a satisfactory level. Some landlords

have been placing very stringent rules for the properties. “It is also important to understand landlords' expectations. For example, landlord Daphne Dean is known for her stringent regulations, which include four cleaning inspections throughout the year and a limit on the number of houseguests after 9 p.m. Many current tenants ... were finding this situation difficult, stating ‘We're just not Daphne Dean people,’ while others found the regulations worth it because of the quality of Dean's houses.”

That's the Queen's Journal, Friday, November 22. The full text is attached as appendix 2.

Many of the student rental houses in the Ghetto are three-bedroom houses that are turned into five-bedroom student flophouses by the elimination of the living room and dining room. A Victorian-era two-storey building is usually turned into three two-bedroom apartments with the basement being one of the apartments. The three-bedroom house is not very attractive in rental costs. Each of the five occupants for a house within a 10-minute walk to the university is priced about \$460 a month, plus heating, water and electricity, and drops to \$350 for a 15-minute walk. Landlords who rent to students charge a very significant premium for their properties. According to rental ads in the Kingston Whig-Standard, there are many rentals for non-student rentals of three-bedroom houses, and they are about \$1,100 to \$1,200 a month, as compared to student rentals of \$1,750 to \$2,300 a month for the same size of building and usually not as well maintained.

CMHC Rental Market Survey shows that the average rent for a three-bedroom apartment in Kingston is \$750 with heat, water and electricity included. Try to find that in the student rental area, where most of the two-bedroom apartments are much more than \$750. It's not just around Queen's that the over-\$400-a-month student rent per room is found. A quick survey of the university housing website shows that the \$400 level per room is common. The landlord bases this price on the cost of student residence on campus, roughly \$5,000 a year, not including meals, which works out to about \$400 a month, but includes heat, water, electricity, phone for local calls and high-speed Internet. Students doing their first rental do not understand that heat, water, electricity, phone and high-speed Internet add about \$100 a month to the rental cost.

If you get a presentation from providers of student housing, keep the following in mind: These people usually try to present themselves as people who provide a valuable service to students and try to pass off their service as something like student travel. Student travel provides a service to students at a cost about 30% below market. In Kingston, student housing usually means three times market.

“With the landlords getting a very significant”—

The Chair: Excuse me. You have just over a minute left.

Mr. Faseruk: “With the landlords getting a very significant rent for their properties, they should have ample money to properly maintain their properties. Unfor-

tunately for students, most improvements have to be tenant-driven. Nobody is required to check property standards on a consistent basis"—Queen's Journal.

With Bill 109, if the residents of poorly maintained houses complain, they may be stuck with rent increases to cover the cost of bringing the rental housing up to the property standards of the community. To give you an idea of the magnitude of the problem, this year my daughter filed a 35-page property standards complaint about her Ghetto house. It was inspected by the city of Kingston, and the inspector found several further property standards violations that my daughter had not included in her complaint.

Why are property standards not enforced? In addition to the usual canard about the city staff being undermanned and overworked, there is the additional problem of the ownership of the rental properties, as many are owned by prominent members of the Kingston community. The current mayor, through a company called Rosen Corp., owns the following properties: 332 MacDonnell, 773 Montreal, 4, 6 and 12 Orchard, 305 Rideau, 863 Princess, 755 Gardiners and 1776 Joyceville.

The wife of the longest-serving mayor owns the following property: 192 Union, 382 Alfred, 130 Helen, 130 Calderwood, 12 Foster and, last but certainly not least, 31 Aberdeen.

If you're not familiar with Aberdeen—

The Chair: Thank you. I'm going to have to cut you off. You've two seconds left in your delegation. We appreciate your being here tonight and we do have your written submission.

Mr. Marchese: He's got two seconds—

The Chair: I understand. No, he's got a bit more than that.

We appreciate your being here tonight. Thank you very much.

Committee, this brings to a close our hearings for this evening. I'd like to thank all of our witnesses, members and committee staff for their participation in the hearings. This committee now stands adjourned until 4 p.m., Monday, June 5.

The committee adjourned at 2059.

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Monday 5 June 2006

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Lundi 5 juin 2006

Standing committee on general government

Residential Tenancies Act, 2006

Comité permanent des affaires gouvernementales

Loi de 2006 sur la location
à usage d'habitation



Chair: Linda Jeffrey
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 5 June 2006

Lundi 5 juin 2006

The committee met at 1601 in room 151.

RESIDENTIAL TENANCIES ACT, 2006

LOI DE 2006 SUR LA LOCATION
À USAGE D'HABITATION

Consideration of Bill 109, An Act to revise the law governing residential tenancies / Projet de loi 109, Loi révisant le droit régissant la location à usage d'habitation.

The Chair (Mrs. Linda Jeffrey): Good afternoon. The standing committee on general government is called to order. We are here today to continue public hearings on Bill 109, An Act to revise the law governing residential tenancies. I'd like to welcome all of our presenters, as well as the members of the audience.

I'd just like to remind our witnesses that the rules of the House apply in this committee. In other words, there is no cheering, no clapping and no form of demonstration allowed. I would ask that everybody respect those rules. As Chair, it's my role to ensure that these hearings run on schedule and that all of our presenters have an opportunity to make their deputations without interruption.

SOCIAL HOUSING SERVICES CORP.

The Chair: Our first presentation today is from the Social Housing Services Corp. Mr. Hughes, could you come forward, please? Welcome. We're glad you're here today. After you've introduced yourself and the group that you speak for, you'll have 10 minutes. If you leave some time in that 10 minutes, we'll be able to ask questions. You have the floor.

Mr. Merv Hughes: Thank you very much, Madam Chair and members of the standing committee on general government. Thank you for this opportunity to appear before you today. My name is Merv Hughes. I'm a member of the board of the Social Housing Services Corp., SHSC, and the social housing manager for Haldimand and Norfolk counties. I'm happy to bring the perspective of SHSC on the Residential Tenancies Act.

Bill 109 represents an opportunity for SHSC to assist the province of Ontario in achieving a balance between landlord and tenant rights and responsibilities and for the province to consider the social housing sector's particular role in meeting the housing needs of our most vulnerable citizens. I am tabling the full SHSC analysis of Bill 109, but will limit my remarks to 5 themes: (1) the precarious

financial position of many social housing providers that reduces the capacity to deal with maintenance issues and energy conservation; (2) the need to tailor the Residential Tenancies Act to meet the special circumstances of social housing providers; (3) our desire to continue working with the Ministry of Energy and the Ministry of Municipal Affairs and Housing on smart meter and energy conservation issues; (4) the emerging problem of energy poverty; and (5) our support for key RTA provisions.

Background of SHSC: The Social Housing Services Corp. was established under the provisions of Ontario's Social Housing Reform Act, 2000, the SHRA. The SHRA provided the legislative authority to devolve social housing to municipal and district service managers in 2002, and it also established SHSC as an independent corporation providing common services to service managers, local housing corporations, non-profit and co-operative housing providers previously administered by the provincial government.

SHSC fulfills the need for a central body to serve as a business resource to 47 service managers and over 1,200 housing providers in 455 municipalities and districts across Ontario who collectively manage some 250,000 social housing units, with over 700,000 residents. We provide consistent quality services to housing providers, while taking advantage of economies of scale. SHSC's programs include insurance, pooling of capital reserves, joint purchasing for natural gas, and research for best practices.

The social housing sector in Ontario: Non-profit housing providers manage their operations within very restricted budgets. Overall, two thirds of the rent comes from residents with the lowest income levels and the remaining one third from fixed subsidies from local municipalities. Social housing providers face the problem of having insufficient capital reserves to address their infrastructure renewal needs, including replacing energy-inefficient equipment or engaging in energy-efficient projects which would also capture capital renewal requirements. They are prohibited by the Social Housing Reform Act from refinancing or encumbering their key asset, which is the property.

These restrictions distinguish social housing from our private sector counterparts, who have greater access to capital financing, tax treatments and a larger revenue stream in the form of rents paid by tenants. The RTA imposes a broad set of obligations upon landlords for

maintenance, energy conservation and legal process. SHSC recognizes the careful balancing act between landlords and tenants that governments must achieve. While there is much to commend in the RTA, the legislation also imposes additional open-ended liabilities and costs on housing providers without any identification of resources to meet them.

SHSC recommends that the provincial government should deal with the backlog of capital repairs and the projected requirements for energy retrofits by creating stable and sustainable funding for investment in social housing infrastructure over the next decade, building on partnerships such as the energy conservation program between the conservation bureau of the Ontario Power Authority and SHSC. That's recommendation 1.

Similarly, the Landlord and Tenant Board, LTB, which is to replace the ORHT, would gain many new powers and processes under the RTA. The LTB workload will increase significantly due to the increased number of hearings required, as well as the greater number of the circumstances and factors that adjudicators need to consider in arriving at their decisions. SHSC recommends that the LTB be resourced adequately to minimize impacts on non-profit providers and waiting list applicants, which will be our recommendation 2.

Determinations related to housing assistance, section 203: SHSC supports section 203, which limits the ability of adjudicators of the Landlord and Tenant Board to review decisions made about rent-geared-to-income eligibility—RGI—and benefit levels. This makes good public policy. First of all, RGI is governed by the Social Housing Reform Act and its regulations. If there are problems with the Social Housing Reform Act, it is not up to the RTA to fix them. Secondly, social housing providers receive intensive training on income verification and rent-geared-to-income determination. It makes little sense to have another body without the necessary background second-guess RGI calculations. Thirdly, the SHRA requires that tenants have the ability to have their decision reviewed. SHSC supports the clarification provided by section 203, which restricts the ability of the Landlord and Tenant Board to review RGI eligibility and level of assistance: recommendation 3.

Smart metering, sections 137 and 138: The SHSC supports the government's efforts to create a culture of conservation. SHSC wants to expand our efforts with the Ontario Power Authority to introduce efficient appliances and upgrade our energy conservation standards. We support smart metering because we know that tenants will reduce their electricity use whether they pay for it or not. But we think it is a mistake to require substantial investments in conservation just to install a smart meter. That means our members will have to wait for funds to become available just to smart-meter. It makes more sense to go easy on the installation of smart meters—just require efficient appliances—and save the tough requirements for retrofits and energy upgrades for when and if electricity costs are transferred to tenants.

1610

SHSC has three concerns about shifting electricity costs to low-income tenants. First, under clause 137(3)(b), RTA regulations will specify how the landlord is to reduce rents by the cost of electricity shifted and related costs. This suggests that any administrative or billing fees the tenant experiences are also included in the rent reduction. The non-profit provider has to cover this cost, which could be significant. If the fees are \$10 per month, a provider with 100 units might be \$12,000 out of pocket each and every year. This is a huge hit for us.

Remember that in order to cost-shift, the provider has to meet substantial energy conservation standards. It makes more sense that once a landlord has gone through all the steps ensuring that electricity costs are minimized, they are not penalized for doing so. If tenants assume the billing cost, landlords will have to reduce the rent for a cost that did not exist before. SHSC recommends that clause 137(3)(b) be amended by deleting the phrase "and related costs," which is our recommendation 7.

Our second concern is the different ways the RTA and the SHRA treating energy costs could create unintentional consequences, such as energy poverty. For example, the SHRA prescribes set amounts for utility charges and allowances on a regional basis for different-sized units. Any mismatch between the RTA rent reductions and the SHRA utility charges and allowances could create unintended financial problems for the housing provider or the low-income tenant. Just to complicate things even more, the SHRA also sets out cost benchmarks for non-profit providers.

The Chair: Mr. Hughes, you have just over one minute left. If you could summarize, please.

Mr. Hughes: In terms of maintenance, maintenance is another big one for social housing. We inherited a capital deficit when the province downloaded, and it's been growing ever since. By 2015, it's expected to reach \$1 billion.

We know our buildings have problems and we know why. Let's not forget that a building with significant maintenance issues is also one with significant financial problems. We need to develop a strategy and a funding source that allow us to deal with our outstanding maintenance items. While we're at it, let's incorporate new energy conservation at the same time.

I've already spoken several times to the need for sustainable funding. I want to draw the committee's attention to recommendation 9, which states that subsection 7(1) be amended by the addition of section 195 to the list of RTA provisions which do not apply to social housing. Section 195 gives the Landlord and Tenant Board the power to order the tenant pay rent to the board in situations with severe maintenance problems.

If a non-profit housing provider has a severe maintenance problem, they are also facing a severe financial problem in dealing with a construction or major repair defect. They have no cushion to rely on, and a redirect of rents could easily lead to mortgage default and possible loss of the project from the social housing stock.

The Chair: Mr. Hughes, I'm sorry; you've expired your time. We have your presentation here.

Mr. Hughes: I thank the committee for its time.

The Chair: We appreciate your being here today. Thank you very much.

KINGSTON RENTAL PROPERTY OWNERS ASSOCIATION

The Chair: Our next delegation is Kingston Rental Property Owners Association. Mr. Manders, welcome. When you begin, if you could announce the group that you speak for and your name for Hansard.

Mr. Steven Manders: I'm Steven Manders, secretary of the Kingston Rental Property Owners Association. I own and manage a few mid-size apartment buildings with my wife. My tenants run the gamut from mothers on assistance with several children, to some tenants with disabilities, students, doctors and lots of cooks. I do all the maintenance except where licensed tradesmen are required.

The Kingston Rental Property Owners Association has been around since 1982, and I have been a member since 1987. We have a great website where we advertise our units. We've developed a great lease which we researched carefully and presented to the Ontario Rental Housing Tribunal to proofread before we distributed it to our members to use. We wanted to make sure it was a good, clean lease.

We get politicians of all stripes, municipal property inspectors and the fire department, to mention a few, attending our meetings. The thrust has always been on landlord education, professionalism and ethical management from all our members, and I'm proud of every one of them.

We have about 90 members. About 80 of them are mom-and-pop operations. We also have most of Kingston's major landlords as members. As such, we own or manage half of Kingston's rental units. So I do indeed speak on behalf of the landlords of Kingston and represent the views of the other 340,000 landlords in Ontario, and that's according to Canada Customs and Revenue Agency. Most of our members own a dozen rental units. They're merchants, dentists, tradesmen, engineers, teachers, civil servants, retired people and a handful of full-time landlords and property managers. They're all good, honest people who are the pillars of the community. They make Ontario grow. Bill 109 paints them like a bunch of thugs, thieves and slum landlords who can only be controlled with substantially higher fines, penalties and tough regulations. It's contemptible.

For tenants who deliberately stop paying the rent and eventually skip out owing as much as possible and those who deliberately or recklessly damage property, there are no penalties. They are just ordered to vacate. That's not a balance.

Most of our rental units are invisible from the street. They're houses, townhouses, condos, student rentals, duplexes, triplexes and basement apartments. They flow

into and out of the rental market depending upon demand and changes to how they are being perceived by the various levels of government. If the market is soft and the tenant vacates, the units are often sold back to owner-occupancy.

In 1990, the NDP treated the landlords' assets with contempt. The vacancy rate crashed faster than anyone imagined possible because nothing was demolished, nothing was converted from residential, nothing was seen happening from the street. In 1997, the Tenant Protection Act treated landlords more fairly and the landlords flooded the rental market with new rentals, often without anything being built. Owner-occupied units flowed back into the rental market. These units flow into and out of the rental market just as the wind blows through the trees.

Landlords are upset with the way many levels of government have treated them and their investments. It's a difficult job keeping up with maintenance. Add to that many tenants who are just reckless, careless, plainly don't care, can't pay or won't pay. The tribunal figures, which I have distributed to everybody—that was downloaded off the Ontario Rental Housing Tribunal website—show that 65,000 landlords made an application to the tribunal. Tenant applications are only 7.5% of that, and only 1.3% of those were for maintenance issues, yet half of Bill 109 is for maintenance and punishing landlords. What more evidence do you need that landlords are, for the most part, not the problem? They're the ones with the problems, and they're also a solution.

I've been an active participant in the Social Planning Council of Kingston, which works with the homeless. They have also been invited to attend some meetings at KRPOA and I've attended with John Gerretsen at the Social Planning Council meetings. I've worked on the annual KRPOA food drive. It donates to the Partners in Mission Food Bank. We have collected tens of thousands of pounds of food for them.

In 2002, I was invited to speak at the head table of the newly formed Kingston association of tenants. They wanted more information about the multi-residential tax ratios, which is hard on poor tenants. John Gerretsen defends this tax inequity, which is clearly aimed at the most affordable of housing units. Anyway, John Gerretsen arrived late because he'd been attending another meeting. When he finally arrived, he was seated at the head table on the stage, directly beside me. I understand in Toronto you don't usually have landlords attend tenants' meetings and tenants attend landlords' meetings, but in Kingston it can happen. The reality is that we're in business with each other and we need to find mutually acceptable solutions to our common problems. What a novel idea.

After the presentations, the tenants were allowed to ask questions of John. There were a few good questions, and a bit of whimpering and whining, about many different topics. John was sympathetic to every problem regardless of its merit. He promised that everything they wanted would be granted by a Liberal government; we were heading into an election. He knew no limits about

what was reasonable or what would be fair with the landlords; it was of no concern to him.

One tenant said to John that a friend of his had an order made against him at the tribunal for \$4,000 and that just was not fair. Nothing was said about whether it was rent arrears, damages or whatever. John said that would never be allowed to happen under a Liberal government. The facts behind the case were irrelevant to him. He had not even asked. The impact on all the fine landlords that had put so much into their rental units did not matter to him. This one sentence summarizes more than anything else what is driving John Gerretsen's politics: The tenants can do no wrong, the Liberals will protect them, and the landlords' problems are irrelevant. This clearly shows up through all of Bill 109.

1620

At the town hall meetings chaired by Brad Duguid two years ago—this was in Kingston—about a dozen tenants showed up. They had a few specific problems that they wanted addressed, but on the whole, they were satisfied with the TPA. They said so. Ditto for a dozen residents from a mobile home park. Half a dozen homeless people showed up. Their problem was that they could not find anything; their income was just too low. They needed more money. Rent controls won't fix that. They even said so.

About 50 angry landlords attended the meeting. They outnumbered everyone else combined. They were exceedingly upset with what John Gerretsen was proposing and they made it very clear. Brad Duguid can verify this summary of events; he chaired the meeting. John Gerretsen was also present.

John Gerretsen has not consulted with nine Nobel laureates who condemn such rent controls. He has not listened to the landlords he is attempting to regulate with a big hammer. It's a one-man show.

KRPOA had John Gerretsen speak at our meeting in January 1986, a few other times, and again in 2003. It was not consultative; it was, "Here is what we're going to do to you, and what are you going to do about it?"

Here is what we are going to do. First, John's ideas aren't very different from the NDP and David Cooke's rent controls brought in in 1990. Landlords felt they could not operate in such an environment and virtually all new apartment construction ceased. Vacancy rates crashed. Rental houses, townhouses and duplexes were just taken off the rental market. None were demolished, none were converted to other uses, but tenants could not find a place to rent at any price. The poor lost the most under strict rent controls, the very people they were intended to help. Renovations ceased too. This is all history; you saw it happen. Quality went down. There was no competition. Public housing soared, but it devastated the provincial budget. The 340,000 landlords of Ontario got angry and the Common Sense Revolution was born. That's what they can do, and they will do it again.

The Tenant Protection Act was born out of the ashes of the NDP's strict rent controls. Construction then soared; renovations resumed. Rents rose at first, but now

they are falling, as was predicted would happen. So rents, on average, are not going through the roof, as Howard Hampton claims. It's simply not true. The market is working now for the landlords and the tenants.

The Chair: Mr. Manders, you have a minute left.

Mr. Manders: That's all I need.

Those landlords have their life savings on the line, and John Gerretsen is playing games with it. He just does not grasp the impact that has on investment or disinvestment. These people are the professionals and tradesmen of Ontario.

John Gerretsen's policies are not based on careful consulting, good research or successful examples from abroad. How many tenants have said they're just what they need?

I have deliberately avoided discussing the individual proposals in Bill 109. I've written letters to all of you on that. Others have also covered that. I want you to consider the political ramifications if a lot of these issues are brought in. I can't stop you from passing Bill 109. I believe it will pass despite any evidence of its detrimental effects. So get a comfortable chair, sit back and watch the history lessons from the 1990s repeat themselves again. Thank you.

The Chair: You left six seconds. Good timing. Thank you very much.

RENTERS EDUCATING AND NETWORKING TOGETHER

The Chair: Our next delegation is Renters Educating and Networking Together, Ms. Pappert. Is that right?

Ms. Mary Pappert: Yes.

The Chair: Welcome. If you could name your group and your name, and when you begin, you'll have 10 minutes. If you leave some time at the end, we'll be able to ask you questions.

Ms. Pappert: Thank you. My name is Mary Pappert and I am the president of Renters Educating and Networking Together. Thank you for this opportunity to be here today.

Renters Educating and Networking Together is a volunteer, proactive, non-partisan group of citizens who seek to improve the state of tenants in the region of Waterloo. We believe that every responsible tenant—and we say "responsible"—has a basic human right to shelter that is safe, secure and affordable, and we have several hundred members through the Waterloo region.

The repeal of the Tenant Protection Act, 1997, and the introduction of new Ontario tenant and landlord legislation has been a topic of discussion for our RENT members since November 16, 2003, when an Ontario Liberal news release said, "We will bring in real rent control legislation within one year." Our RENT group has submitted our comments and concerns to the members of the Ontario government on several occasions and waited with great anticipation for this new legislation.

On May 3, 2006, with little advance warning, the Honourable John Gerretsen introduced Bill 109, the Resi-

dential Tenancies Act, 2006, the RTA, in the Legislative Assembly of Ontario. Subsequently, on May 12, John Milloy, the MPP for Kitchener, provided our group with a copy of the legislation, and on May 17 he informed RENT that we could put our name forward to attend the public hearings scheduled for May 29, May 31 and June 5. All this is happening within 34 days.

Since that time, two members of our executive have endeavoured to read, digest and analyze this 130-page document, which constantly refers the reader to the prescribed 75 regulations which are mentioned in section 241. However, there are no details of the defining regulations available as yet. This greatly hampers our attempt to understand the fine points of this legislation.

RENT congratulates the government for presenting this new legislation, and some of the provisions are beneficial for tenants; however, for us to provide any detailed comments with regard to the beneficial and detrimental sections of this legislation is impossible and it's contrary to any reasonable expectation in 34 days.

I will make some brief comments, and I have submitted for your consideration a written summary of the issues in our attachment B. Subsequently, we will continue to study this document in anticipation of further opportunities for comment in the future.

For the tenant members of RENT, three of the most devastating sections and omissions of this protection for tenants in the RTA are the provisions for vacancy decontrol, which allows a landlord to charge a new tenant anything they wish; the exemptions allowed for new apartments—units not occupied before November 1991; and the above-guideline rent increases.

With regard to vacancy decontrol, after the TPA was proclaimed in 1998, landlords used this decontrol to raise rents by any amounts. Frequently, in our area, they went up 25% to 40%—and I have attachment A, that gives you those statistics. In many instances, landlords used these funds to gut empty apartments and refurbish them just to increase the rent. While this may have been a means to encourage the landlord to upgrade and maintain apartments, it contributed very significantly to an increase in market rents charged throughout the Kitchener–Waterloo region. The continuing of this decontrol is a driving force in the marketplace today. Yes, there are vacant apartments in almost every building, but affordable units for working families, for seniors and for single parents are fast moving out of the realm of possibility, and are one of the leading contributors to homelessness in our area.

The exemptions for new apartments: These exemptions allowed in the RTA declare that any unit not occupied before November 1991 would be exempt from the Ontario guideline rent increases, and also exempt from several provisions by which these tenants may apply to the Landlord and Tenant Board. This exemption allows the landlord to increase the annual rent charged for a sitting tenant by any amount they can get, and the tenant has no recourse but to move out. There is no logical justification for these exemptions from tenant protection, and they constitute an injustice to these ten-

ants. These same exemptions were allowed in the TPA; however, the landlord and tenant legislation prior to the TPA did have a just solution for landlords and for tenants. New units were allowed exemption from the legislation for a period of five years, during which time the landlord could adjust rents and achieve a reasonable rent. After five years, the accompanying sections of the legislation were applied and these once-new units received equal treatment and a reasonable rent control was imposed.

With regard to the above-guideline increase, the increases above the Ontario guideline for sitting tenants may be critical for some landlords who are in hardship in some instances. But in most cases, the expenses for which landlords are applying should have been anticipated and planned for, and were provided for within the annual guideline increases that these landlords have been receiving and compounding over years.

1630

The RTA does provide one beneficial aspect to the AGI—it limits the maximum amount for the guideline to 3% annually, a reduction from 4%, and it limits it for three years. However, consider: If you get a 3% above-guideline increase compounded over three years, you'd have approximately a 10% increase. Then add to that the amount of the average guideline—and say we take just 2.3% annually. Compound that and you've got 8%. That means an 18% increase could be imposed over a three-year period for the landlord, and the tenant must absorb that amount. The rent compounds and adds above that to each guideline, year after year. This practice devastates the concept of affordable housing.

I have further comments about the AGI. We can't really make them, because we don't know what the regulations are. We don't know what "extraordinary" increases are, "eligible" increases. We have no wording or formulas for the regulations to define it.

While RENT has read, digested and analyzed only a portion of the 130-page RTA, we have provided a few specific comments in attachment B. However, RENT believes that to provide detailed comments with regard to the entire Residential Tenancies Act with such an insufficient time frame is contrary to any reasonable expectation. We expect that all interested parties will be provided the opportunity for input to the RTA and the wording for the rules and regulations before the Residential Tenancies Act receives third reading and royal assent.

Thank you for your attention. I'd be glad to answer any questions.

The Chair: You've left about 30 seconds for each party to ask questions, beginning with Mr. Hardeman. I would warn members, it really is 30 seconds—that's the question and the answer.

Mr. Ernie Hardeman (Oxford): Thank you very much for your presentation. It's a very good presentation. I concur with you that it's a very short time frame, but I would point out that this bill will be passed the first time it gets back for third reading, with only one day of debate.

Ms. Pappert: That's not reasonable. We've waited since 2003.

Mr. Hardeman: But that's the government's position.

Mr. Rosario Marchese (Trinity-Spadina): Mary, Mr. Manders said that the Tenant Protection Act worked well for the landlords and tenants. Is that true, in your view?

Ms. Pappert: No: 30-second answer.

The Chair: I love brevity. Mr. Duguid?

Mr. Brad Duguid (Scarborough Centre): I want to thank you for being here today, Ms. Pappert, and for participating in the consultations that we've had previously. They were the largest tenant consultations held probably in the history of the province. So we really appreciate your involvement there. I know Mr. Milloy has talked to you. I think he met with you when this legislation came out, because he did get back to us with some suggestions as well. I appreciate your input and I thank you for being here today.

Ms. Pappert: You're welcome. We appreciate the opportunity. However, the brevity is beyond reason.

The Chair: Thank you very much for being here.

MULTIPLE DWELLING STANDARDS ASSOCIATION

The Chair: Our next delegation is Multiple Dwelling Standards Association, Mr. Aaron. Welcome.

Mr. Bob Aaron: Thank you, Chair.

The Chair: As you get yourself settled, I think you know the standard here. If you could say your name and the organization you speak for; you'll have 10 minutes. I'll give you a one-minute warning if you get close to the end. If you leave time, we'll be able to ask questions.

Mr. Aaron: Madam Chair, members of the committee, members of the Legislature, thank you for inviting us here, "us" being the Multiple Dwelling Standards Association. My name is Bob Aaron. I'm a lawyer who happens to be a landlord and the chair of our landlord association, but I'm also a lawyer specializing in real estate for the last 30-some years.

Our organization has been around for 35 years and has worked hard to assist and support rental housing providers across Ontario. We provide a credible voice for this industry and aim to provide a forum for sharing of information and ideas. Our organization may not be as large as FRPO. We're comprised of mid-sized and small and some large landlords. Some people have classified us as sort of an organization for mom-and-pop landlords. Indeed, a lot of our members are first-generation Canadians or immigrants to the country. We represent about 400 members who hold somewhere between 40,000 and 50,000 units. Our goal is to ensure respect for tenants and to provide clean, safe, well-maintained rental housing and continuity and stability for the industry.

We want to ensure fairness in the legislation. Our treasurer, Chris Morgis, and I have had the opportunity to meet with ministry staff, and indeed the minister and member Duguid here; I'm very grateful for that oppor-

tunity. We applaud the government's decision and measures to keep vacancy decontrol intact. We are, in general, pleased with the legislation, although there are some problems that we have with it. I only want to address what I see are the problems. As a lawyer, I feel that the rule of law is very, very important. We want to make sure that the rule of law is maintained with the revisions to the legislation.

Section 82 is our most serious concern. This is the one which allows the tenant to raise any concerns he or she has at the time of the hearing, blindsiding landlords without notice. I'm very concerned about that.

I want to tell you something that happened to me a couple of weeks ago. I got a parking ticket, which I really didn't think I deserved, because the signs were ambiguous; you had two conflicting street signs. I decided, okay, it's not the 20 or 30 bucks, it's the fact that the signs were conflicting and I'm going to fight this. So I showed up at Metro Hall with my ticket in hand, ready to come next week to a trial, and they said, "Thank you very much. You'll hear from us in eight months, and your trial is going to be in 12 months." And I thought, "This is really a system that has collapsed on itself." That's what I'm worried about in the section 82 hearings. The latest statistics we have from the tribunal for 2003-04 show that there were 36,000 defaults and 30,000 hearings. So we have more than 50%—maybe 50%, 60% are defaults. I don't see any indication from the government that they are going to supply the necessary manpower and money to the tribunal so that we don't have a system collapse like we have in the city of Toronto parking legislation and parking bylaw enforcement.

I'm very, very concerned that the system is just going to collapse or implode on itself. Right now, it takes maybe 75 days to have a hearing and evict a tenant who is not paying; I'm concerned that we're going to be looking at a year. We're going to have landlords and tenants held in suspended animation while the system breaks down on itself. We're going to need night hearings. We're going to need maybe weekend hearings. I don't see any indication that the government is willing to spend the millions of dollars that are necessary to fund a system that's going to literally double in size overnight. I'm going to say that again: double in size overnight. Are we going to be equipped to have the Rental Housing Tribunal or whatever replaces it double in size? We're going to need double the members, double the staff, double the workspace, or we're going to have to be operating basically 24/7 to keep the backlog down. It concerns me.

I'm concerned that the rule of law will be displaced by people who want to take advantage of the system and the delays built into it. Landlords are going to be blindsided by tenants who show up with bogus disputes at the last minute, without the landlord getting any notice that there's been a complaint about a leaky faucet or whatever.

I'm also concerned that we're not going to be able to use private bailiffs for evictions. I've said this before,

that it takes the sheriff a month or two to carry out a legitimate court order, and it's just far too long. If we had private bailiffs who are licensed, bonded and insured, I don't think that would harm the system, and it might in fact take some pressure off government employees.

Those are not all our concerns; they're some of them. We endorse the submissions of the Greater Toronto Apartment Association and the fair rental policy association. I don't want to repeat their positions. We endorse them. We appreciate the time we've been given to appear before the committee. I thank you all for listening. If you have any questions, I'm here for the remainder of my 600 seconds.

The Chair: We have a whole minute for each party—you did really well—beginning with Mr. Marchese.

1640

Mr. Marchese: Mr. Aaron, how important was it that the government broke its promise to keep vacancy decontrol?

Mr. Aaron: Good question. First of all, it wasn't a complete promise; it was conditional on certain vacancy levels being obtained. Right now, we have huge vacancies, and we've got landlords dropping rents. I don't see it as a broken government promise.

Mr. Marchese: I see. But how important is that to you, that vacancy decontrol is maintained?

Mr. Aaron: I think that's critical in the current marketplace. I've got members literally with 20% to 30% vacancies.

Mr. Marchese: I understand. The fact that they maintain exemptions from rent control provisions for properties built after 1991, do you like that too?

Mr. Aaron: If the government was to have any integrity in its promises, that had to be maintained.

Mr. Marchese: Not from 1998, but go back to 1991: That was a good thing they did, wasn't it?

The Chair: Sorry, Mr. Marchese, you've exhausted your time. Mr. Duguid.

Mr. Duguid: I'll actually continue on the same lines, because I think Mr. Aaron has raised an interesting point that probably hasn't been talked about too much. Mr. Aaron will recall the original commitment that the government made, which was to get rid of vacancy decontrol, yes, but replace it with a system of regional decontrol that would have been based on a 3% vacancy rate, which in essence would have gotten rid of rent controls across the province. In your recollection—I know you were part of the consultation process—do you recall any tenants or any landlords supporting that proposal?

Mr. Aaron: I don't recall anybody supporting the proposal. We would have had one rent control law on the south side of Steeles and another one on the north side of Steeles. It would have just been a disaster.

The Chair: Thank you. Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. As we're talking about the government's promise and whether it was kept or wasn't kept, I would just point out, if you don't see a bit of a conflict or a problem here, that the reason we're having this bill put

forward is that the tenants believed they were going to get complete rent control back, rent control that works. Does this bill, in your opinion, go anywhere near doing what the tenants were expecting from the Liberal promise?

Mr. Aaron: I think, Mr. Hardeman, that this bill will work. With the tinkering that I've suggested, I think this will work and vacancy decontrol—

Mr. Hardeman: My question wasn't whether the bill will work. My question was, do you believe that this fulfills the promise the Liberals made to the tenants in Ontario?

Mr. Aaron: In large measure, yes.

The Chair: Thank you very much. That's the end of our time.

Interjection.

The Chair: A good answer. Thank you for being here.

LONDON PROPERTY MANAGEMENT ASSOCIATION

The Chair: Our next delegation is the London Property Management Association. Mr. Cappa, welcome. We're glad you're here today. Thank you for coming. You did provide a handout?

Mr. Paul Cappa: Yes.

The Chair: You'll have 10 minutes, and if you could say your name and the organization you speak for. If you leave some time, we'll be able to ask some questions.

Mr. Cappa: Thank you. My name is Paul Cappa, and I'm serving a two-year elected term as president of the London Property Management Association. On behalf of the association, I'd like to take this opportunity to thank you for considering our request and allowing us to appear here today to address the standing committee.

Just by way of background, the LPMA is a non-profit association, much like what you heard from Mr. Aaron. We're an association of small and large residential property owners. Our association was formed approximately 35 years ago, and the basis for our organization is to assist and educate landlords.

The bulk of the LMPA's membership is really comprised of the mom-and-pop landlords. They're the ones who attend our regular monthly meetings and they're the ones we strive to assist, in terms of understanding what has become over the years a complex web of laws regulating our industry. Most of these mom-and-pops have full-time jobs. They've invested in rental property to either supplement their income or to provide for their eventual retirement. Many of our members rent out homes, duplexes, semis, townhouses and single condo units.

I can tell you that before appearing here today, we did have an opportunity to meet with our local MPPs to discuss our concerns or share our concerns with them. For the purposes of our paper, we've identified two primary issues; in fact, I think Mr. Aaron's just touched on them. One is removal of the default hearing process for non-payment of rent applications. Just touching on that for a minute, in our members' experience, in most cases,

tenants don't dispute non-payment applications. The reason for that is that they know they owe the money. Removing that process—it's a process that's worked well—comes with a considerable cost to working landlords, who have to take a day off work to attend at the tribunal. It's going to affect their livelihood, and, ultimately, there's a trickle-down, and it may affect how they price their accommodation. Again, without belabouring it, in our submission the process has worked well. There are enough safeguards, we believe, built into the TPA that tenants have the opportunity to either bring a motion, if they feel that the order is inaccurate, or to pay and stay. In our view, the procedural safeguards are there, and no change is required.

The second issue, which I think Mr. Aaron touched on, was the nature of the dispute process that's contemplated under the RTA. There's a fundamental principle in law that a party have notice of any dispute. In canvassing our membership, there are concerns about the delays that will flow in allowing tenants to simply show up at a hearing and essentially state or raise any dispute that they would have been entitled to raise in their own application. Certainly, being well into the Tenant Protection Act—say, seven or eight years—tenants are well apprised of the tribunal at this point. For most of those who do find themselves before the tribunal in rent arrears situations, it's not their first time before the tribunal. With the location of duty counsel and access to duty counsel right at the hearings, there's no reason why landlords can't have advance notice, at a minimum, of issues that tenants tend to raise in response to arrears applications. So the right of disclosure, which is something that's provided for in other court proceedings, including small claims court, is something that, at a minimum, should be incorporated into the RTA.

We have provided a number of other issues that we've raised in our paper. Some of them are of a technical nature, and, time permitting, I won't go through all of them, but just touch on a few.

Orders prohibiting rent increases: What we're recommending there is that these orders be limited to serious work order deficiencies only.

With respect to section 62, speedy eviction for undue damage, we'd actually like to commend Mr. Duguid. I know we were part of the consultation process. That's an issue that I specifically raised with him, and we're happy to see that it has been addressed here. Our underlying concern is more of an administrative or interpretive issue, that if a landlord has proceeded under that section, perhaps incorrectly or in an incorrect manner, that rather than having to start over, there be an amendment to the RTA that would allow that notice and that proceeding to be tied to the section 63 process, so that the landlord doesn't have to start all over again.

With respect to rent arrears in section 74, again, there don't seem to be any consequences for a tenant who fails to be forthright in an affidavit, in a motion to set aside, so we're looking for some balance in that provision and that there be some consequences if the information filed is

false. Certainly there are lots of sections in the act that penalize landlords for failing to carry out their statutory obligations. Again, just under that section where the tenant is required to reimburse for enforcement costs, there should be a specified time frame within the order.

1650

Just jumping on, one of the other concerns that we had relates to the mediation process. Right now, generally speaking, landlords have bought into that process. It's used quite extensively. It saves on the labour and costs associated with a tribunal because it streamlines a number of applications, but the way the new section 78 is written, there's going to be a disincentive for landlords to mediate. The way it works right now is if a tenant breaches any terms of the mediation agreement, the landlord knows with certainty that they can go back and get their order for that breach. Now, the way the new section is written, the board is going to be completely reopening these agreements, looking at whether there have been any other breaches of the statute. It takes away certainty where landlords, in good faith, negotiate with tenants and give them a second chance. We're asking that that be re-examined.

I'm going to just jump to the issue of submetering. I think, on balance, landlords are certainly in favour of having the ability to transfer responsibility of hydro to a user because, fundamentally, we believe that it leads to the promotion of energy conservation. Unfortunately, there are so many strings attached and so many economic consequences for building owners that the incentive for submetering has been watered down to the extent that virtually no one I've spoken to is willing to take that on or to even contemplate it.

The Chair: Mr. Cappa, you have one minute left.

Mr. Cappa: Okay. Certainly for the smaller property owners in three-storey walk-ups or duplexes to go in and install submetering in those situations, if the economic consequences are that they have to go in and entirely renovate the building to meet some as yet unspecified standard, the cost could be prohibitive and it could also eliminate or drive many of the smaller guys out of the business. Those are my comments.

The Chair: Thank you very much. We appreciate your being here today.

NORTH PEEL AND DUFFERIN COMMUNITY LEGAL SERVICES INC.

The Chair: Our next delegation is North Peel and Dufferin Community Legal Services. Mr. Fleming, welcome. As you get yourself settled, you could say your name and the organization you speak for, for Hansard. When you begin, you'll have 10 minutes. If you get close to the end, I'll give you the one-minute warning.

Mr. Jack Fleming: Thank you. My name is Jack Fleming. I'm here on behalf of North Peel and Dufferin Community Legal Services. I'm happy to appear in front of a committee chaired by our local MPP.

I am a lawyer practising residential tenancies law; I've been doing that for over 20 years. I've written a legal text on landlord and tenant law, and I'm director of a legal clinic where we deal with a lot of tenancy issues. About a thousand tenants a year contact us with their problems. There would be a lot of issues to cover, more than one could in 10 minutes, and you've been hearing them all day long and for other days. I'll touch on just a few.

I'll mention in passing that the lack of a set-aside process, I think, is a big mistake. For people who don't show up at the hearing, there should be a process to bring a motion for a set-aside, just like the courts. It's a very simple procedure to put in. It works better for everybody. Having people have to file reviews in those situations is definitely overkill.

I'll also comment in passing on the purpose section: That does need to be reworded. We have a long history, going way back to the introduction of part IV of the Landlord and Tenant Act in 1968, of this legislation, in its various incarnations, being interpreted as remedial legislation for the protection of tenants. We're threatened with losing that legal interpretation by the way the purpose section is currently worded, in particular with the change in the name. I'm afraid that with the way the law works and the way judges interpret the law, changing the name from the "Tenant Protection Act" will be treated as having significance. That, then, has to be overcome by being extremely clear in the purpose section. But that's all I'll say on those issues.

I'm going to address two issues here in more detail. One is the exemption for landlords who themselves rent the building, and the second is the exclusion of Social Housing Reform Act issues. Beyond that, I'll simply say that North Peel and Dufferin Community Legal Services, which serves tenants in Brampton, Caledon and up in Dufferin county, supports the brief which you received from the Advocacy Centre for Tenants Ontario. We adopt and support everything that's in ACTO's brief.

I wanted to look at two issues. One is landlords who rent the building. First of all, I just want to emphasize the importance of being covered by the legislation—the Tenant Protection Act now, the Residential Tenancies Act to come. If you're not covered by that, if you fit within one of the exemptions to the act, you have no protection. You can be turfed out very easily. If your landlord decides that he or she doesn't like you, you can be out on the street: no notice, no reason, no process—just like that. In fact, the police will assist the landlord in putting the tenant out on the street. So it makes a huge difference: You're either in the protection or you're out of the protection.

I think a lot of people are familiar with the "shared kitchen and bathroom" exemption. If you fit that, where you share kitchen or bathroom facilities with the owner, you're not protected; you're in the situation I just described and you can be turfed out very easily.

Let me posit this example for you: Picture a house, just an ordinary house. The landlord lives upstairs. Downstairs we have a self-contained apartment with a tenant in

it, renting from the landlord who lives upstairs. There are no shared facilities: no shared kitchen, no bath, separate entrance, separate everything. Is it covered by the legislation? Maybe not. It depends on whether the landlord upstairs owns the house or not. If that landlord is renting the house from the owner, living upstairs and in turn renting out a self-contained apartment in the basement, then that tenant is not covered by the legislation. That situation is carried forward in the new legislation. It comes from the definition of "landlord" in section 2 of Bill 109.

Something was brought in—actually, it wasn't in the original Tenant Protection Act; it was brought in in a later amendment by the government of the time. In the definition of "landlord," you'll see a clause (c). It says:

"'landlord' includes ...

"(c) a person"—here's the tricky part—"other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord"—and so on and so forth.

It's that part right there: "other than a tenant occupying a rental unit in a residential complex...." In other words, if the landlord who has possession of the whole building also lives in it, is not the owner and is in fact a tenant him- or herself, then you're exempted from the legislation.

The tenant in the example of the basement apartment I gave you, which is a common one, probably doesn't even know that the landlord upstairs doesn't own the house. How could you find out? Tenants can't protect themselves from this exemption. It's easy to look out for the "shared kitchen and bathroom" one—we can warn people about that—but they can't protect themselves from this one, they can't avoid it. It's only when there's trouble that they suddenly discover that they have no protection. It's a big problem for low-income tenants because those are the sort of tenancies that they're looking for: They're looking for the cheaper tenancies that are in a house, that sort of thing.

This provision does a great deal of harm. It doesn't do any good; it doesn't appear to have any purpose. Our submission is that that exemption in clause (c), the part that reads, "a tenant occupying a rental unit in a residential complex," should be removed so that the definition of "landlord" does not exclude someone simply because they happen to live in the building as well and are not the owner of the building. That's the first point I wanted to make.

By the way, I suspect that it was accidental. While I was talking one time, in the course of this process, to folks at the ministry, they seemed a little surprised as well. I don't know what they were intending in the first place, but this is what has actually happened. It's a very clear law and it's very harmful for tenants.

1700

The other issue I want to address is the Social Housing Reform Act. This is the act that governs rent subsidies. It's tremendously important, a very important benefit to

have. It protects a lot of low-income tenants. In my experience, it protects a lot of single mothers and their kids. They seem to be a lot of the people who are receiving rent subsidies. The waiting list can be very long. In the region of Peel, for example, where we're located, it's 10 years or more to get a rent subsidy and sometimes subsidies are revoked. They're taken away, sometimes for good reasons and sometimes not. What happens is that a decision is made to take away the rent subsidy. It's done without providing details to the tenant and without any sort of a hearing or even sitting down with the tenant to talk with them about what the issue is. You just get a letter, you're given a chance to respond to the letter, they don't like your response, and your subsidy is cut off. Then you can ask for what's called an internal review, which means it goes to somebody down the hall to have a look at it and you have another chance there. What there isn't is any appeal to any outside body. There's no independent right of appeal to some third party.

With the best will in the world, we know that mistakes will happen. We know that some people will have their rent subsidies cut off when it shouldn't happen. A good comparator is Ontario Works, a similar sort of situation: You get people who are cut off for failure to provide information or there are overpayment issues and they're cut off. They have an internal review process where, just like on rent subsidies, usually what happens is that the initial decision is upheld. The difference with Ontario Works decisions is that from there it can go to the Social Benefits Tribunal, an independent right of appeal. At the Social Benefits Tribunal, about half of those Ontario Works appeals are successful. That means that wrong decisions are being made. It's not an unfair guess to say that maybe there's a similar percentage of wrong decisions being made on rent subsidies, but you don't have a right of appeal anywhere.

What has this got to do with Bill 109? What it has to do with it is section 203. Section 203 says that the new board is not to make any "determinations or review decisions concerning" rent geared to income, and specifically issues dealing with the Social Housing Reform Act. So here's what happens: Your rent subsidy gets cut off. So then your rent goes up to market rent. You can't pay the market rent because you're a single mom living on Ontario Works. Then the landlord gives you a notice of termination for not paying the rent.

The Chair: You have one minute left.

Mr. Fleming: Then it goes to the board, and the real issue is never examined. So our submission is that section 203 should be removed or, at the very least, not proclaimed until some other right of appeal is put in place. Thank you.

The Chair: You can have one or two more sentences, if you want.

Mr. Fleming: It's okay.

The Chair: Thank you very much for your submission. We appreciate your being here today.

NOOR NIZAM

The Chair: Our next delegation is Noor Nizam. Welcome, Mr. Nizam. You have 10 minutes. If you get close to the one-minute mark, I'll give you a warning that you're near the end. If you leave some time, there'll be an opportunity for us to ask questions.

Mr. Noor Nizam: Honourable Chair, committee members and officials, thank you very much for giving me this opportunity to appear before your committee today and to place before you certain focused suggestions and proposals that I feel should be given due consideration and be co-opted as amendments to the legislative enactment that will become a statute once the bill is carried through in the Ontario Legislature soon.

My name is Noor Nizam. I am a new Canadian and I have lived in Ontario—Hamilton—for the last five and a half years. Before that, I lived in Montreal for about a year.

I am here not to support this bill or to oppose it, but to present my views and opinions, to place before you and this committee my real-life experience as a newcomer tenant with a marginal income level—the constraints I will not discuss here—and reflections of this bill on such issues, which are vital for consideration as amendments. These amendments are vital if Bill 109 really and truthfully means:

“Part I

“Introduction

“Purposes of Act....”

I will not indulge in all the clauses of the bill. It is a very detailed legal document, full of legal jargon that does not serve the purpose of the objective of part I, the introduction of the bill.

This document of 144 pages in reality is something an average Canadian with eighth-level or secondary-level education cannot understand. Let's face facts: How many poverty-level or below-poverty-level, low-income clients living within social assistance and housing, rent-geared-to-income housing, and new immigrants who need ESL support, can cope with this document when the necessity arises for their own interpretation and understanding? So it is a document for the legal profession and jargon for the administrators.

I am happy that I was able to understand this document and analyze it through legal thoughts. I have found that certain remedies are needed to make it comply with the opening statement of the bill.

I will only concentrate on the issues or clauses that concern my thoughts. I therefore place before this committee the following:

Under “Interpretation

“2(1) In this act,” the word “rent” is specified very broadly:

“‘rent’ includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord's agent for the right to occupy a rental unit and for any services and facilities and any privilege, accommodation or thing that the land-

lord provides for the tenant in respect of the occupancy of the rental unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing, but 'rent' does not include, ..."

The words "other things" are not specific in legal terms. They have no limitation. This is harmful to the tenant and advantageous to the landlords. It violates the Human Rights Code.

Suggested amendment by me: "rent for the right to occupy a rental unit and for the mandatory amenities provided."

I'm going on to "Interpretation," page 5:

"'vital service' means hot or cold water, fuel, electricity" etc.

Essential services have to be specified, because some essential services such as exhaust fans over the cookers in the kitchen and washrooms in certain apartments are a necessity. But due to this clause, it is limited when issues or conflicts arise and legal interpretation is required.

Suggested amendments: "Exhaust fans over the cooking appliances, in the kitchen and washrooms" to be included.

"Interpretation," page 6.

"For the purposes of this act, a tenant has not abandoned a rental unit if the tenant is not in arrears of rent."

There is a Catch-22 in this clause. Does this mean that the tenant has abandoned a rental unit if the tenant is in rent arrears? Eighty per cent of tenants who will fall within Bill 109 are the average income earners, the marginal, borderline income earners, low-income earners and sometimes those within social housing assistance programs. There may be many instances where there are delays in the settlement of due-date rents. This interpretation is not reasonable and does not fall within the social justice legal requirements.

Note: Refer to "Restriction on recovery of possession," 39(a). The above has bearing on this clause. You can go back to the bill and refer to that.

Suggested amendment: "'Arrears of rent' does not mean the tenant has abandoned the rental unit."

"Conflict with other acts," page 6:

"If a provision of this act conflicts with a provision of another act, other than the Human Rights Code, the provision of this act applies." This is not helpful to those who are governed by the Social Housing Reform Act but who live in rent-geared-to-income assistance, where a private landlord's house has been contracted for this service. It's very important. This also has a bearing and an impact on page 9 of your act.

1710

Suggested amendments: Due thought has to be given to this need and appropriate amendments should be included. I am not a competent authority or competent to suggest any.

"Part II

"Tenancy Agreements

"Selecting prospective tenants"—this is what your proposed act says:

"10. In selecting prospective tenants, landlords may use, in the manner prescribed in the regulations made under the Human Rights Code, income information, credit checks, credit references, rental history, guarantees, or other similar business practices as prescribed in those regulations."

My document gives what the Human Rights Code says, but I think the practice of credit checks, credit references, guarantees and other similar practices adopted by landlords has made it difficult for new immigrants, low-income earners and vulnerable groups like refugees—especially students, because I am teaching in a university—and minority communities to fulfill such demands.

The first and last months' rent to be paid and included as a condition of the tenant agreement, also called the lease agreement, has to be given much thought. Landlords are in a much stronger position to discriminate against these citizens, these potential tenants.

Suggested amendments, page 11:

Due to the fact that there is no direct indication in the Human Rights Code regarding income information etc., section 10 should be removed or deleted.

I have touched on the responsibilities of landlords. I have also gone on to the suggested amendments and inclusions, and I have given my comments on that. When I come to receipts, I feel that in section 109(1), "on request" is a very tricky question. Rather than being on request, it should be mandatory. "On request" should be removed from that section or that clause.

Regulations: "The Lieutenant Governor in Council may make regulations...."—if this committee cannot accept these recommendations or amendments I am presenting, it's better to present them to the Lieutenant Governor.

The Chair: You have just a minute left.

Mr. Nizam: I can open it up to questions.

The Chair: You probably should finish. That isn't sufficient time to ask enough questions. Do you have a wrap-up statement that you'd like to finish with?

Mr. Nizam: My wrap-up statement is that the fiscal allocations that have been reduced to cities when it comes to downloading have also made a problem for cities. In other words, the housing authorities in cities do not have enough funds to recruit human resources to look into all the complications that may arise from this bill. It's also important that when the bill says "vital services," the vital services have to be made available.

Let me thank Judy Marsales, MPP Hamilton West, for giving me the support to enable me to come here. I had to find my way here through great barriers. Thank you very much.

The Chair: Thank you for being here today. We appreciate you being here.

ROBERT LEVITT
DALE RITCH

The Chair: Our next delegation is Mr. Robert Levitt and Mr. Dale Ritch. Welcome, gentlemen. Are you both going to be speaking today?

Mr. Robert Levitt: Myself, then Dale. My name is Robert Levitt. I run the Ontario Tenants Rights website: <http://www.ontariotenants.ca>. I'm not a professional lobbyist, a member of any political party or group, nor am I funded by government, so I have no reason to water down my message. I am a citizen and a tenant, and I'm concerned with what these hearings demonstrate about our weakening democracy. I am sharing my very limited time with Mr. Dale Ritch to afford him the opportunity to discuss the specifics of Bill 109, a right the government is making available to few. My recommendation to this committee is to postpone third reading of the act and, in the meantime, to immediately, by order in council, change existing regulations to put a stop to default eviction orders.

The government needs to stop their time allocations in the Legislature on this act that are meant to stifle debate and due consideration of the impacts of this law, and hold full, proper and recorded committee hearings throughout Ontario in August and/or September. It took the government two years to write this legislation; now, give citizens and this committee an extra three months to analyze its impact on Ontario's four million tenants.

Two years ago, the government held town hall meetings, but those were mostly about the previous government's law and its flaws. None of this is on the public record. It was not done through this committee, and so never recorded in Hansard.

The government also did an online consultation in 2004, but they set all the parameters. The government selected the background information people should read before they answered the questionnaire. The government selected the questions, and the government selected the answers people had to choose between. The most egregious example of the government's biased survey was question 6: "In your opinion, how high should a region's vacancy rate be before the government looks at removing rent controls?" The only choices provided were: "(a) 3% (b) higher than 3% (c) no opinion/don't know." They never provided the choice that tenants might never want rent controls removed, ever.

The government's online consultation was merely a manipulative public relations scheme. It is clear that since they could not eliminate what little rent controls remain using the excuse of vacancy rates, they have chosen to continue vacancy decontrol as a means to eliminate what few affordable apartments remain.

Now I will get to the crux of my concerns about the process and the lack of adequate, fair public hearings into the new Residential Tenancies Act. The problems with this government's process can best be summed up by quoting a complaint already submitted to this committee 10 years ago, from page 4 of the Liberal dissenting report on rent control consultations, September 21, 1996: "Liberal members of the committee and many presenters were frustrated that the very limited time (20 minutes) allowed to each group permitted very little opportunity for dialogue or discussion. It was also unfortunate that of the over 400 groups that applied to appear before the com-

mittee, there was only time to allow for 260 presentations." You can find this report in its entirety on my website. I am sure the over 1,700 average daily visitors to the site will find it interesting.

In 1996, the Harris government held Hansard-recorded meetings of this committee on their tenant discussion paper, hearing 260 deputants over more than 80 hours. These were the hearings the Liberal report castigated them for, because they only gave each deputant 20 minutes. In 2004, the McGuinty government held town hall meetings outside of this committee, giving each deputant only five minutes, with no public record of what was ever said.

In 1997, the Harris government held hearings on Bill 96 in seven cities over 49 hours, hearing some 140 deputations, giving each organization 20 minutes and each individual 15 minutes. This compares with now: In 2006, the Liberal government is holding hearings on their Bill 109 in only one city, listening to 49 deputants for only eight hours, giving each only 10 minutes. It appears that the McGuinty government is far more guilty of the very accusations they made against their predecessors.

Why the sudden rush to get this law passed after all this time? What is the government afraid of? And why the lack of proper recorded consultations with sufficient deputation time based upon the government's own publicly demanded criteria?

Page 7 of the Liberal 1996 report states, "Vacancy decontrol hits some of the most vulnerable tenants—seniors, the poor, the disabled, students and the unemployed seeking new work." Now they support vacancy decontrol. Does this mean the McGuinty caucus no longer cares for seniors, the poor, the disabled, students and the unemployed? In 1996, the Liberal Party in opposition argued that vacancy decontrol would not create new rental housing, but now that the Honourable John Gerretsen is the Minister of Housing, they say it will. The Liberal Party complained that the previous regime failed to "thoroughly research the impact of their proposed policies," but what such research has the present government commissioned to support their policies?

Reconsider this legislation, particularly in the areas of vacancy decontrol, landlord entry into apartments and the forced installation of smart meters. Tenants want real rent controls, but most of all we want honesty in government, not spin.

1720

Mr. Dale Ritch: Thanks, Bob.

Ladies and gentlemen of the committee, my name is Dale Ritch. I am a paralegal, and I consider myself to be an expert on rent review. I've done more than 400 rent review applications, known as above-guideline applications, under the existing legislation, and I'm continuing to represent tenants in the city with regard to rent review.

I'm very disappointed in this legislation. I think tenants have come to expect a lot more from the Liberals. Tenants played a big role in the defeat of the Conservatives in the city of Toronto in the last provincial elec-

tion, and if this bill is on the books, I think they'll play a big role in making sure the Liberals don't get re-elected.

I want to specifically deal with just three issues here today. First of all, we're talking about a \$40-million transfer in the first year of this legislation in the city of Toronto alone from multi-residential tenants, out of the pockets of tenants into the hands of landlords, first of all, by the reduction of the deposit from 6% a year to approximately 3%. If we go with the cost of living at about 1%, that's about \$7.5 million right there. I don't think too many tenants are aware of what the Liberals are planning in this area. Secondly, with regard to the guideline, going with the cost of living would take up the annual guideline from about 2.1% to 3%. That would be another \$35 million right there out of the pockets of tenants into the hands of the landlords. That's \$40 million in the first year alone. I don't know if too many Liberals are aware of that, but you should be. Tenants aren't going to appreciate that.

I want to spend most of my remarks talking about rent review. This is the potential disaster for the Liberal Party. First of all, you made a big mistake by continuing the most—and Bob used this word; I'll use it as well—egregious feature of the current legislation, which is the carry-forward. That is, if an increase for capital expenditures in the application is greater than 4%, it gets carried forward in future years. Tenants simply do not understand carry-forward. They do not and they will not.

Under the old legislation, before the Tory legislation, you got all the increase up front in the application. Whether it was 3%, 10% or 50%, tenants knew what they were dealing with. They knew how big the increase was. Now they're told, "Oh, it's only 4%." Tenants cannot deal with that. That's not fair. That's sneaky. That's the kind of sneakiness we had in the Tenant Protection Act. That's the kind of sneakiness the Liberals are bringing forward. So get rid of that carry-forward, put it all up front so the tenants know what they're dealing with when they go to the tribunal. If you insist on bringing forward rent review, get rid of carry-forwards.

Secondly, costs no longer borne: This is supposed to be some big deal for tenants? Well, let me tell you, most capital expenditures are 15 or 20 years, so 15 years after they go to the tribunal, the landlord's going to reduce the rents appropriately. Big deal. How many tenants are still going to be living in their unit 15 years from now? Not very many, folks. So that's not going to do anything for tenants.

The other costs no longer borne are on utility increases, and this is the time bomb all Liberals should be concerned with. Under the current draft, rents would be rolled back the year after the year of an increase due to utility costs, but only if the actual decrease in all the utilities together is greater than the increase in the application. Well, that ain't going to happen, folks, because every year you're going to get a hydro increase and you're going to get a water increase, because we know the city of Toronto's jacking up the rates every year.

I would suggest that there aren't going to be any decreases under costs no longer borne for utility applications, but what could very well happen is if we get a big jump in gas costs this winter—

The Chair: Mr. Ritch, you have one minute. Okay?

Mr. Ritch: —next spring, guys, look at hundreds of applications flooding the tribunal for utility increases; 100% pass-through in the first year. That alone could blow the Liberals out of office next fall, when you plan to go to the polls. So, please, do something about that loophole in the act under utility applications.

Now I just have to wrap up my remarks here. Smart meters are not a smart idea, guys. What you're doing here is you're transferring the hydro cost from the landlord—who owns the building, who owns the stove, who owns the fridge, who owns everything—to the tenant. Well, a tenant isn't going to buy a new fridge and a new stove. He'd be crazy to. It's the landlord's building. You're expecting a tenant to invest money to reduce consumption? This is a stupid, stupid idea, smart meters and passing on hydro costs to tenants. So don't do it. Don't do it.

The Chair: Thank you, Mr. Ritch and Mr. Levitt. We appreciate your being here and your passion.

DUNDURN COMMUNITY LEGAL SERVICES

The Chair: Our next delegation is Dundurn Community Legal Services, Mr. Jain. Is that right?

Mr. Vinay Jain: That's correct.

The Chair: Welcome. You have 10 minutes. If you get close to the one-minute mark, I'll give you a warning. If you leave time, there will be an opportunity for us to ask questions. We have your paperwork here.

Mr. Jain: Sure. Thank you for the invitation to come. My name is Vinay Jain. I'm a staff lawyer at Dundurn Community Legal Services. We're a legal clinic funded by Legal Aid Ontario. We're one of many legal clinics throughout Ontario, some of whom you've already heard from. We're administered by a volunteer board of directors who provide us with policy and guidance based upon their experience in the community. We provide legal advice and services to the most vulnerable citizens in our community.

Our community itself is the downtown Hamilton area, including west Hamilton, and that also includes Ancaster and Dundas. We also provide public legal education services and undertake law reform initiatives in areas that have an impact on our clients. We practise in a variety of areas of law, including landlord and tenant, social assistance, human rights and income maintenance.

I would also point out to you that we provide tenant duty counsel services to the Ontario Rental Housing Tribunal in Hamilton as well as in St. Catharines. Additionally, we did it for one year in Burlington, and that covered the entire Halton region. Prior to this time, I would also note that the legal clinics in Hamilton provided tenant duty counsel services under the Landlord and Tenant Act.

The point of that is that I think it puts us in a good position to observe some trends that have been occurring in residential tenancies.

We're here today of course to provide our input into some of the changes being proposed to the law governing residential tenancies under Bill 109.

Now, from our reading of Bill 109, we would first like to congratulate the government on a few things. We felt there were some changes which had been sorely needed under the Tenant Protection Act. For example, the change to eliminate the five-day dispute requirement was a long-needed change. There were countless tenants who were affected by this in a detrimental way. Another example is the elimination of the ability of landlords to apply for above-guideline increases where the work was done simply as a result of required ongoing maintenance.

In the same vein, the provision in section 82 of the Residential Tenancies Act which allows tenants to raise repair and maintenance issues when an arrears application is brought we feel is a welcome addition. In fact, we feel that this is a very important inclusion. Our experience in dealing with tenants on a day-to-day basis, as well as attending at the Ontario Rental Housing Tribunal as duty counsel, has been that in the vast majority of arrears applications tenants inevitably mention some degree of failure to repair and maintain by landlords. Often what I'm told at the tribunal or at the clinic when tenants call is that it's precisely this, i.e., the repairs issues, that's one of their big disputes. We hear that on a daily basis.

This is captured by TPA section 11, which talks about the interdependence of covenants, but in our experience the tribunal, aside from extreme cases, has not recognized this argument. What we have seen at the housing tribunal is that sometimes when we intervene, on occasion adjudicators, at least in the Hamilton and St. Catharines area, are willing to give adjournments so that a tenant would have time to file a tenant's application for repairs and maintenance.

Prior to this—and for the most part even now—what tenants were told was simply, "We can only hear what's before us today, and that's an arrears application. If you want to file something about repairs and maintenance, you're free to do so." We hear that on a daily basis. So what we usually have as a result is a tenant getting an eviction order despite the fact that there may be serious repairs and maintenance issues, and then another application is required to deal with this. That application would only be heard, at least in the Hamilton area, about three to four weeks later, since the tribunal usually schedules tenant applications later than landlord applications. Quite often the tenant's possibly already been evicted.

I would point out to you that under the old Landlord and Tenant Act, the predecessor to the TPA, tenants were allowed to raise repair and maintenance issues when arrears were being claimed if the money disputed was paid to the registrar. In Hamilton, the docket or case list was often as long as 120 to 150 cases in a single day.

What we have at the housing tribunal—in Hamilton again; that's my experience—is that at most you're looking at 30 applications in a single hearing block. This is four or five times longer. Even with that length of a docket, the vast majority of matters were dealt with in that same day.

Obviously, this system worked well. It was an efficient system and avoided second hearings. It wasn't as though these hearings, even when these issues were raised, went on into second and third hearings. As I have mentioned, this is also allowed under the TPA, although not explicitly. By explicitly including this section, we can have a section which will not only protect tenants, but at the same time it can be fair to landlords. For a tribunal apparently dedicated to efficiency, it makes sense, and there's absolutely no reason to suggest that it can't work or that it will bog down the system. History has shown that it does not. We applaud the government for including this section and would strongly urge that it be maintained as is.

1730

Another topic I want to touch on is vacancy decontrol. I've congratulated the government, but there's always a "but." The Residential Tenancies Act fails to correct at least one of the key problems, in our view, of its predecessor, the TPA: It does not do away with vacancy decontrol. This is a very serious concern for the low-income tenants of Hamilton. Even though the vacancy rate has recently gone up in the last year, our experience has been that rental units at the low end of the scale—we're not talking about thousand-dollar units—have had their rents remain, at best, the same. But the fact that rents have remained level has only really occurred in the past year. According to the Social Planning and Research Council of Hamilton, rents in the last 10 years have increased at least an average of approximately 20%. For most of those years, there's been no rent control. Apart from last year, when social assistance rates went up 3%, during roughly the same period of time that rents have gone up 20%, social assistance rates have remained pretty much static. Similarly, the minimum wage was only recently increased to the present wage of \$7.75 an hour from the previous rate of \$6.85 an hour. This is an increase of about 13%, according to my math. While this is an improvement, it is still not enough.

How does this affect tenants? I think it's fair to say that for low-end rental units, at best, when vacancy rates are high, vacancy decontrol works only to roughly maintain rents at a static level, but when vacancy rates are low, vacancy decontrol serves to increase rents. That's been our experience in Hamilton, and that's what the statistics have shown. As a result, it is the most vulnerable citizens in our community—that is, those on social assistance and the working poor—who continue to suffer from this lack of rent control.

In Hamilton, a report was commissioned in 2005 by the city entitled *On Any Given Night*; I've attached a copy of that to our presentation. It provides a snapshot on key factors impacting on homelessness. I hope that all of

you have a chance to at least flip through it, as it gives a very stark and, at the same time, a very real picture of the reality faced by low-income renters in the city of Hamilton.

Some of the stats, for example, very briefly:

—399 men, women and children stay in emergency shelters on any given night;

—The social housing wait list has over 4,200 applications;

—The wait time for a one-bedroom subsidized unit ranges from about two to three years for an undesirable area to seven to eight years for the desirable ones. Previously, you heard that it's about a 10-year wait in Peel;

—Homelessness, at the same time, has increased over 100% in the past eight years.

The Chair: You have one minute left.

Mr. Jain: Okay, thank you.

The issues I've mentioned clearly require some needed reform; elsewhere, I've talked about social assistance rates. How it impacts these hearings is that it is clear that the poor and the working poor in Hamilton need some type of rent control.

Very briefly, I'd say that it would be very helpful if there was some mechanism for set-aside hearings. If you ask tenants to do a review process, it's prohibitively expensive for them to do so, especially at the very low end of the scale.

I've talked a little bit about other topics in my presentation. Obviously, it was a bit too long for an oral hearing, but I thank you for this time.

The Chair: Thank you for your presentation here today.

GWL REALTY ADVISORS

The Chair: Our next delegation is GWL Realty Advisors. Are they here today? Great. Welcome. As you get yourself settled, if you could say your name and the organization you speak for. You will have 10 minutes. If you leave time at the end, we'll be able to ask you questions. I'll give you a one-minute warning.

Mr. Stephen Price: Thank you. My name is Stephen Price. I'm the senior vice-president at GWLRA responsible for multi-residential properties. I personally have 16 years' experience in the real estate business, primarily focused on residential and multi-residential. I also currently serve as the vice-chair of FRHPO, the Federation of Rental Housing Providers of Ontario. I should say that I completely support the submission that FRHPO has put in, so I'm not going to get into a great deal of detail on all the different points that FRHPO has already made. I'd also like to thank you for allowing me the opportunity to make this presentation.

GWLRA, for those who don't know, is a full-service real estate investment advisor for institutional investors. Our services include acquisitions and dispositions, development, asset management, property management and related services. We have about \$8 billion worth of real estate in Canada today and a further \$2.1 billion invested

in the UK, a total of 300 properties. Assets under management are in four asset classes, not just multi-residential: We're in the office, industrial, retail and multi-residential sectors. We have properties across the country, but in Nova Scotia, Quebec, Ontario, Alberta and BC in particular. We employ about 600 people in eight regional offices.

On the multi-residential front, our residential portfolio is valued at approximately \$2 billion, about 25% of our asset base. We have approximately 15,400 units in 61 properties. I'm telling all of this detail to you to give you some context for how seriously we consider ourselves in this business, particularly in the multi-residential sector.

The majority of our residential portfolio is in Ontario. We have about 10,500 units, and it represents 70% of our total portfolio.

In the apartment sector, GWLRA has focused on investment, development and asset management activities; that is, growing and setting the strategic direction for our apartment portfolio. We retain third-party property management companies to manage the day-to-day operating activities. However, we are not hands-off. GWLRA has been highly involved in leading the investment of over \$200 million in capital improvements to our national residential portfolio since 2001. I couldn't find the statistics preceding that—it wasn't compiled in the same fashion—but that's only over the last six years, including this year.

We also believe in managing our buildings to a higher standard. For example, in 2005, we retained J.D. Power and Associates to survey the level of customer satisfaction of our residents. The results of that survey are factoring into our delivery of customer service at the property level and helping us to focus our future capital expenditures on areas of concern to our residents, like windows, amenities and suite improvements.

The majority of our portfolio is property managed by large, professional companies like Realstar and Minto. I understand that these companies will be making deputations concerning various elements of the proposed Bill 109 that are unworkable from an operating perspective. I hope that you will take their concerns into consideration. They and other large professional operators represent the cream of the crop in property management in Ontario. To the extent they are advising you that certain provisions of the proposed bill create significant problems in effectively operating apartment properties, for the betterment of residents and owners, I believe these concerns are legitimate and should be taken into account before you finalize the legislation and regulations.

In my comments today, I intend to first say a few words about the institutional investor perspective as it relates to investment in Ontario apartment assets, and then I'll highlight a few areas within the proposed legislation of particular concern.

First of all, the institutional perspective: From October 2003, investors have been nervous about changes to legislation, given the open-ended nature of election promises made to introduce real rent controls. Over the

last three years, there have been transactions not approved at our investment committee, which I sit on, in part because of the risk of more restrictive rent controls.

Our clients like apartments as a real estate asset class because it presents an opportunity for modest but stable returns. They do not expect to earn higher returns equivalent to office buildings or alternative investments like private equity, where the risks are also higher. Changing the legislative framework in a marketplace that is largely working, to the detriment of institutional owners, increases the risk of earning a fair return and reduces interest in continuing to invest in this asset class. That's bad for residents of apartment buildings and I believe it's bad for Ontario. I ask that you measure the extent and specifics of the changes contained within the final bill against the impact they will have on institutional investors' desire to invest, and continue to invest, in apartment buildings in this province.

Thankfully, vacancy decontrol has been retained, and the market will, as it does, set fair rents for vacant units, a concept that continues to favour the residents in today's marketplace and, in the longer run, reward owners who invest in their properties. We are not in the business of providing social housing. We provide rental accommodation for a fair return—quality housing and customer service for a fair price.

1740

However, there are other changes in the proposed legislation which inhibit our ability to effectively operate our properties. I'll focus on sections 192 and 82, section 30 and section 137, if I have time.

Sections 192 and 82, with respect to default orders and tenant issues in non-payment applications: I consider this an administrative logjam, and I'm sure you've heard this before. The landlord and tenant board is going to face a very significant, likely unmanageable increase in the number and length of hearings. The removal of default orders will force all applications to a hearing, even when the resident doesn't dispute the application.

Also, as residents are given the right to raise any matter in response to a landlord application at the hearing and have it heard as though they had made an application, hearing times will increase dramatically. This will result in significant increases in the amount of financial and human resources owners will be required to dedicate to the hearing process and longer periods of unpaid rent. Smaller owners with limited resources will face the most difficulty in managing this increased burden; bad residents will be rewarded.

Proposed changes: We believe that the default order process generally works, in that it focuses the tribunal on those cases where the resident has a valid case to contest an application. We would propose looking at the process and engineering any required improvements, but not eliminating default orders on a wholesale basis. Perhaps we could simply ask the resident in advance of the hearing if they dispute the application and if they want a hearing. If they answer no to each of these questions, the

owner should be entitled to an order from the board allowing them to proceed.

In respect of section 82, we believe that separate applications relating to resident issues is the best fix. This allows owners to be aware of the issues in advance of a hearing and to respond to those issues. Often, the owner might agree with the resident and move forward with a resolution, averting a hearing. That's our perspective. Failing that, some other type of advance warning by the resident of issues to be raised in a hearing should be a minimum standard.

The second issue I'd like to raise has to do with section 30 as it relates to OPRIs, orders preventing rent increases. The board is going to be asked to make determinations at hearings that are likely impossible to make on a fair and informed basis. That is, the board will be asked to determine when a property is in a serious breach of property standards or maintenance obligations, and consider issuing orders prohibiting rent increases and other measures based on information provided by residents at hearings. Board members may not have the benefit of physical inspections and specific training in technical matters.

We propose, as FRHPO has in their submission, that rent-related remedies in section 30 should be restricted to work orders that relate to a serious breach of obligations. Using the well-developed work order system will eliminate any duplication with municipal property standards and ensure serious breaches are determined by experts in the field, reducing the workload of board members.

Lastly, I would like to speak about submetering, what I describe as not-so-smart submetering. We want to install submeters, smart meters in all of our properties—we have said that publicly—but we are concerned about the potential costs and future liabilities that may fall out of section 137. Submetering should be promoted to ensure take-up with owners who are incented to move in that direction. Unknown and potentially expensive liabilities relating to prescribed energy conservation requirements will deter submetering. Putting the burden of paying the administrative costs on owners versus the resident, as homeowners face, will not encourage owners to submeter. Monitoring for 12 months creates an unnecessary delay and can create conflicts of interests with bad residents.

We recommend that you consider withdrawing this legislation or significantly modifying it to address the issues previously stated. On the matter of the 12-month delay—

The Chair: Mr. Price, you have one minute.

Mr. Price: I'm almost finished—we suggest that you take a true-up approach and look back after the first 12 months and make any adjustments as required.

The Chair: Thank you very much for being here. Unfortunately, you've left insufficient time for us to ask questions.

CITY OF TORONTO

The Chair: Our next delegation is Mr. Michael Walker. Welcome, Councillor. We have your handout here; if you could introduce yourself. Are you speaking for yourself or for the city of Toronto?

Mr. Michael Walker: I will be speaking on behalf of the city of Toronto as chair of the tenant defence subcommittee.

The Chair: Okay. Once you have introduced yourself and your group, you'll have 10 minutes.

Mr. Walker: Thank you, Chair and members, ladies and gentlemen, for the opportunity to address you today concerning Bill 109, the Residential Tenancies Act. I address you today as a Toronto city councillor for St. Paul's. I am also chair of the city's tenant defence subcommittee—a committee devoted to helping, protecting and defending tenants in times of need and crisis.

Almost half of Toronto's residents and 70% of St. Paul's residents are tenants. City council places a great priority on tenant issues and has a range of programs and services to assist them.

It has been over two years since the provincial government released its consultation on residential tenancy reform. City council took the 2004 consultation very seriously and made 50 recommendations in a 60-page report. A copy of that report has been forwarded to your committee by Mayor David Miller in a written submission to the clerk on behalf of Toronto city council.

I'm also pleased and proud to submit for your committee's consideration proceedings of the second tenant forum, held in the city of Toronto on March 9, 2006, which I chaired as head of the tenant defence subcommittee. Over 450 tenants and tenant organizations came and spoke. Many complained about the current legislation, injustices by landlords, and made recommendations for improvements.

Please consider the voice of over 1.2 million tenants in Toronto as you finalize your legislation. We all have a duty to respond to their concerns and issues. Please read the personal notes in the proceedings, which document their real-life experiences and are part of that submission.

Bill 109 addresses several of the issues of most concern to tenants. In particular, I note that Bill 109 sets out a more balanced approach to the determination of rent increases for utilities and capital expenditures. The bill would limit the types of expenditures and amounts allowed as capital expenditures, reduce rents when capital expenditures are paid for and reduce rents when utility rates are reduced.

City council's recommendations went further. Our council recommended that rent increases should not be permitted for capital expenditures necessary because of ongoing neglect, that amortization schedules for capital items should be lengthened to reduce the impact of the expenditures on the above-guideline rent increases charged to tenants, and that landlords should be required to provide evidence of an arm's-length competitive bidding process for capital work to ensure the best price so

that tenants are not charged unnecessarily high above-guideline rent increases. I request the standing committee to consider amending Bill 109 consistent with council's 2004 recommendations respecting the determination of capital expenditure allowances.

Toronto city council also recommended permanently removing the 2% base amount in the current annual guideline increase. This provision is included in Bill 109. Council also requested that interest on the rent deposit equal the annual rent increase charged to a tenant, and Bill 109 includes this provision. In addition, council recommended that the maximum penalty be increased for landlords charging illegal rents or deposits. Bill 109 includes a provision that would increase maximum fines in a number of situations.

Bill 109 introduces a number of provisions intended to ensure the quality and maintenance of rental buildings, including that tenants may apply for an order prohibiting the landlord from taking any rent increases. However, Toronto city council went one step further in recommending that where the landlord has not complied with a municipal work order, all rent increases would be frozen, and that the tribunal or board and city set up an automated system for direct access to municipal work orders and notices to improve efficiency in implementing rent freezes due to non-compliance.

Put simply, city council was recommending a return to the process in effect under the Rent Control Act known as OPRI's, orders prohibiting rent increases, whereby rents would automatically be frozen for all units affected by the outstanding work order rather than requiring each tenant to make an application, as proposed under Bill 109. OPRI's were effective in bringing about landlord compliance with outstanding work orders, nearly 100% each year. I request that the standing committee consider amending Bill 109 consistent with Toronto city council's 2004 recommendations respecting the maintenance of buildings and rents.

Now I'd like to turn to a major omission in the government's proposed tenant legislation. While Bill 109 proposes significant improvements in how rents would be determined for sitting tenants, the impact of these improvements is lost when units turn over because Bill 109 permits vacancy decontrol to continue. The vacancy decontrol provisions of the Tenant Protection Act have significantly eroded the supply of affordable rental housing in Toronto since 1998, with no noticeable impact on the new supply of purpose-built rental housing. As almost one half of Toronto's population lives in rental housing, this is a significant issue.

1750

City council has repeatedly requested the provincial government to get rid of vacancy decontrol in any new tenant legislation—in other words, restore real rent control. In 2004, city council made a number of recommendations about the rents charged to new tenants, including that “a landlord be permitted to charge a new tenant up to the same rent as the amount paid by the

previous tenant.” What this meant was that vacancy decontrol be eliminated.

Let me repeat what I heard from our recent tenant forum. What did tenants, our constituents, say about the matter? Bring back real rent control; rent control is needed to protect tenants; remove vacancy decontrol.

This proposed legislation, Bill 109, the Residential Tenancies Act, 2006, I believe breaks faith with tenants to whom Dalton McGuinty made clear promises prior to the 2003 provincial election. The now Premier, Dalton McGuinty, then made this clear, unequivocal promise to tenants:

“I want to be clear about our plan for rent control. We will repeal the Harris-Eves government’s Tenant Protection Act and we will bring back ‘real rent control’ that protects tenants from excessive rent increases. We will get rid of vacancy decontrol which allows unlimited rent increases on a unit when a tenant leaves.” That was August 2003, three months before the election.

It’s been over two and a half years since that promise and momentous election. And what do we get after a protracted consultation, most particularly with tenants? Broken promises to tenants and tinkering with legislation, leaving the image of real change, but in reality it’s only a phantom of the old legislation.

Did we get rid of vacancy decontrol as promised by Premier McGuinty in August 2003? No, we did not. Did we get back “real rent control” as promised by Premier McGuinty in August 2003? No, we did not.

There is no “real rent control” with vacancy decontrol. Why can’t politicians keep their promises to tenants? Is it because politicians think that tenants don’t count and don’t have the power and influence of special-interest groups? Well, it appears that the tenants did, for a fleeting few months before the last provincial election. And they will in future elections, because tenants are losing their homes, due to affordability issues, to evictions and to demolitions, and they won’t put up with it.

You, the members of this committee, can help Premier Dalton McGuinty keep his promise to tenants of this city and of this province to get rid of vacancy decontrol and to bring back real rent control. Otherwise, there will be no peace. Thank you.

The Chair: You’ve left about a minute and a half, which means you can have 30 seconds with each party. I’m going to begin with Mr. Hardeman.

Mr. Hardeman: We haven’t had much opportunity to ask questions today. I asked the last presenter a simple question: Do you believe, with vacancy decontrol in the bill, that the government is not keeping the promise they made to tenants in Ontario?

Mr. Walker: Unequivocally, yes.

Mr. Marchese: Michael, I congratulate you for being such a strong advocate for tenants, and you’ve done that for many years. Mr. Duguid said that tenants simply didn’t talk about vacancy decontrol, so I presume that in his mind it wasn’t an issue. Is that possible?

Mr. Walker: Well, no. I was at the one in Scarborough, and it was certainly heated and passionate. In

my opinion, they have talked about it. Sometimes they may not understand the exact wording of the legislation but they sure as heck spoke about it. In the two forums that we’ve held, most specifically, that was one of the three most important issues.

Mr. Duguid: I want to repeat this as well, Councillor Walker: Thank you for your many, many years. I know, from the dozen years I’ve known you, that this isn’t a fleeting issue for you, this is a passion, and you’ve been involved with tenants for all that time. So I thank you for providing that voice for tenants.

I appreciate the commitment that you outlined in your report, but that commitment also came with a replacement. We talked about getting rid of vacancy decontrol, but we were going to replace it with regional decontrol, which would have, in this particular climate, with vacancy rates above 3%, gotten rid of rent control pretty near right across the province. Tenants did not support that, nor did you.

The Chair: Thank you, Mr. Duguid.

Mr. Duguid: Is that correct?

The Chair: I’m going to let you answer the question.

Mr. Walker: That’s exactly right, but you broke your promise, which is that you want to get rid of vacancy decontrol. Your regional system never made sense. I do not think you should have rent control or no rent control based on the vacancy rates. That’s not a real reflection of the affordability and the hardship that tenants face.

The Chair: Thank you very much for being here today.

FEDERATION OF METRO TENANTS’ ASSOCIATIONS

The Chair: Our next delegation is the Federation of Metro Tenants’ Associations. I have three names here but I only see two individuals. Are both of you going to be speaking?

Interjection.

The Chair: Oh, is he? Okay. He can join you if he wants. I have a Marcia Barry, a Dan McIntyre and an Emmy Pantin.

Ms. Marcia Barry: Emmy is in the other room, so I think it will be just us two.

The Chair: Welcome. If you can identify the individuals who will be speaking today, the group that you are speaking for, you’ll have 10 minutes. If you leave us some time, we’ll be able to ask questions. I’ll give you a one-minute warning.

Ms. Barry: Okay. Good afternoon. My name is Marcia Barry. I’m a member of the board at the Federation of Metro Tenants’ Associations. I have also served this past year as chair of the tenant action committee. I’ll introduce Dan McIntyre, who is with me. He is the coordinator of the federation’s outreach and organizing program.

The federation, or the FMTA, is a membership-based organization that has been working with tenants in Toronto for better tenant rights since 1974. Our outreach

and organizing team has helped tens of thousands of tenants in hundreds of buildings who have had to cope with above-guideline rent increases. Every year our tenant hotline has offered information and referrals to thousands of tenants trying to cope with a bad law.

We must begin by saying how devastating the Tenant Protection Act has been on tenants. Its demise is long overdue.

We were pleased when Dalton McGuinty, in his pre-election letter, agreed with us that, "Eight years of the Harris-Eves government has had a devastating effect on tenants," and we were thrilled when he promised that, "We will bring back real rent control.... We will get rid of vacancy decontrol which allows unlimited rent increases."

With that in mind, I'll now turn it over to Mr. McIntyre, who will talk about some of our specific concerns with the new bill.

Mr. Dan McIntyre: Good afternoon, and good afternoon to all the tenants in the overflow room, especially.

We're deeply disappointed that the government hasn't addressed the issue of vacancy decontrol. You're running the risk with us that this bill will turn out to be as devastating as the previous one. Why take that gamble?

You have some information from CMHC suggesting that things will be okay for about three years. That's not much of a guarantee. We don't know what will happen after that. We have a quote in our brief—I won't read it all—from Frank Clayton, who has worked for years as a landlord researcher, indicating that in the very near future things are going to change and it's going to be very easy for landlords to pass on rent increases.

If the market does work, there's no harm in having vacancy decontrol eliminated, because it's just there as a safety valve in case the market doesn't work. If the market doesn't work, and we're afraid that's the prediction we're seeing, you're leaving every tenant vulnerable—some more than others—and you don't need to take that risk. You simply write in a provision that the lawful rent is what the previous tenant paid, and we've offered you specific wording for amendments on that.

The annual guideline—you had it right: 55% of the rate of inflation is what you've allowed the last two years; it's something we can live with. We'd rather prefer rent decreases. Buildings are not subject to inflation; they were built 30, 40, 50 years ago. The maintenance is, the operating cost is, but not the building itself. You don't pay more for a used car than a new car. Above-guideline increases: It's what I've been doing for a living for the last few years and I'd just as soon give it up. They are patently unfair.

We do recognize that you've addressed some of the issues that we've brought to you and have improved the above-guideline-increase system substantially; in fact, we think you've improved it well enough that we want to suggest that you bring those improvements in as a transitional measure and that the above-guideline-increase rules be brought in, effective June 1, 2006. There's a tenant in this room who just got a 20.5% rent increase

five weeks ago from the previous bill. There's no reason for having extra increases for utilities or taxes; these are caught in the guideline. And taxes go up when rents go up, so it's a circular effect. We're suggesting that you take that out, but if you don't, make the word "extraordinary" mean what everybody on the street thinks it means and what it meant under the Rent Control Act, which is that it has to meet a threshold of at least 50% above average before it's considered.

1800

We're glad that you're tightening up the definitions of capital expenditures, and we very much applaud allowing tenants to raise maintenance issues. This has come up time and time again at the hundreds of meetings that Marcia and I have been at, that tenants can't raise those issues. A landlord has nothing to worry about if they maintain their building, so if you're going to come to rent review, come with clean hands or don't come at all. That's a good idea too: Just don't come at all.

Costs no longer borne: You've done it right, if you start history on May 3, 2006. You've got something in there. You've put in an adequate provision, but you completely abandoned us on anything that happened May 2, 2006, or the 30 years before, where thing after thing was put into rents and never taken out. Most astonishing is that despite the words of the Ombudsman in 2002, you've done nothing to address the \$40-million increase in rents that Toronto tenants took because of a one-time blip in gas prices that since came down. We're very disappointed that you didn't address that. We do suggest an amendment in our series of 19 amendments that we're proposing.

You came close on orders prohibiting rent increases. All you need to do to fix it is to make it automatic where there's a work order. When you put the onus on tenants to make an application, you're putting an unfair onus on people who are out making a living, trying to pay the rent, the senior citizens on pensions—they're people who don't understand the legal system. Make it automatic, leave all the rest, and then you've got that one right.

You've got a one-year limitation period for tenants to make applications. That's far too short. Basically, what you are saying is that if a landlord gets away with something for a year and a day, they get away with it forever. That's not consistent with other limitation periods. It was one of the unfairnesses that we pointed out in the Tenant Protection Act. We recommend that the limitation period be extended to three years.

I was glad that Mary Pappert talked about exemptions earlier. This is the sleeper issue. Basically, anything that does get built, and it's not much, since 1991—you're abandoning all of those tenants. That's what Mr. Joseph pointed out last week. There really are big loopholes for condominium tenants that we would urge you to address in amending the bill. You've got a lot of work to do on Wednesday and Thursday. I think you should take as much time as you need to get it right.

On evictions: It's astonishing that 64,000 households faced evictions last year. We applaud the elimination of

default evictions, but we do share concerns that have been expressed to you very well by the legal clinic community about a need for set-aside provisions.

We're also very concerned about section 203, which I label "the landlord is always right" section. I think you now know that the landlord is not always right. When they're not right, you've got to have an ability to challenge their evidence and challenge their facts. I think this is a mistake that you've made. Again, you have an opportunity to fix that. We would urge you to do that.

I want to talk about good tenants and bad tenants. That's a dangerous phrase that we're concerned about the use of: good tenants and good landlords. Good tenants run into problems: health problems, job losses, spousal problems; you name it. Those folks should not be left at risk by a government in dealing with evictions. The fact that there's going to be a hearing is a plus and they have to consider that, but do keep that in mind in working with a new board.

Maintenance provisions are better. We're glad, again, that you can raise maintenance as an issue under section 82. Again, if landlords look after the buildings, as many have come here and said they do, they have nothing to worry about. So that's good.

Interest on last month's rent: I want to do you a favour on this one. Your constituency assistants will appreciate this because next year, when tenants don't get the 6%, they're going to call your offices. That's been in there for 35 years; even the Harris government didn't touch that. This is the price that landlords pay in order to have a cushion against those tenants who don't pay. It's something they haven't mentioned in their cost-of-eviction figures, that they have a one-month advance cushion. We urge you to reconsider that one for your own sake and also for the sake of tenants.

Those are all the comments I'm going to make for now. I hope I've left enough time for questions. We've offered you 19 specific amendments. You've got a lot of work to do on Wednesday and Thursday to keep the promise you made for tenants and prevent this act from being devastating in the future.

The Chair: Barely. So we need people to be as short as they were the last time. Mr. Marchese, you have 30 seconds.

Mr. Marchese: Thank you.

The Chair: I like brevity. Thank you. Mr. Duguid.

Mr. Duguid: In 20 seconds or less, I don't see tenants raising maintenance issues being the problem that some are suggesting it is. In your experience, and you've had a lot of experience at the boards, how do you see that shaking down?

Mr. McIntyre: There's no excuse for a landlord not to do maintenance with the high rents they're charging, and the board must take that into account. Currently, the tribunal turns a deaf ear, and that's been extremely frustrating to the people we've talked to over the last eight years of the Tenant Protection Act.

The Chair: Thank you. Ms. MacLeod.

Ms. Lisa MacLeod (Nepean-Carleton): Thank you very much for your presentation.

On the last page, your conclusion says, "But falls short of Premier McGuinty's promise of 'real protection for tenants at all times.'" As this piece of legislation currently sits, is this a broken promise from the 2003 election campaign?

Mr. McIntyre: It's a promise not yet fulfilled. They have through the rest of the week to fulfill it. I'm offering them the opportunity to do that because I think that's always fair to do.

Ms. MacLeod: Okay. You've got three days, Brad.

The Chair: No pressure.

Thank you very much for being here today.

REXDALE COMMUNITY LEGAL CLINIC

NORTH ETOBICOKE REVITALIZATION PROJECT

The Chair: Our last delegation of the day is the Rexdale Community Legal Clinic and the North Etobicoke Revitalization Project.

I'm just going to wait until the noise behind you subsides a little bit so that we can hear your delegation. If I could ask everybody to quietly exit the room so we can get started on our last delegation.

Welcome. I have only two names here, so if you're all going to speak, if you could say your name and the group you speak for. You will have 10 minutes, and I will give you a one-minute warning.

Ms. Karen Andrews: My name is Karen Andrews. I work at the Rexdale Community Legal Clinic. This is John Bagnall, who works at the Albion information centre and is a member of the North Etobicoke Revitalization Project. This is Rev. Kerri Hagerman, who's going to speak about a landlord who liked to inspect a lot, notwithstanding that he did not have the right he will have after the new legislation. A number of points have already been canvassed very well, and we're not going to reinvent the wheel because we want to go home and watch hockey.

The missed hearing: What happens when landlords and tenants do not make the hearing? The date that is fixed is a short one and it's decided by one of the disputing parties. Mr. Aaron spoke about his traffic ticket and I'm going to speak about my rolling stop violation; lawyers are very bad drivers, I guess. I got cited by an officer and got a notice in the mail that said, "You've been convicted. You didn't make your hearing date." I went downtown and said, "I didn't get notice of that hearing." I got another shot in front of a JP last week, and he accepted my argument. I was only disputing the three points of my driver's record; I was not disputing my housing or my child's housing. So a set-aside is very common in law when hearings are fixed, particularly when it's only one party that fixes the date.

Section 203: You've heard about the problems for public housing tenants. The issue of rent and the non-payment of rent is critical to every tenancy. Yet these tenants can't dispute when a landlord alleges that they owe \$2,000 or \$4,000. Mr. Fleming did a very good job talking about that problem.

Here's the problem for other people: Your mortgage company says, "We're bringing foreclosure proceedings on you because you owe \$15,000." So you trot down to the courthouse and you say, "But what is my mortgage payment? What did I not pay?" If a mortgage company had what the public housing landlords are going to have under 203, your mortgage company gets to say, "We're not going to tell you and"—worse—"we're not going to tell the judge." This is a problem, because fundamental to adjudication is knowing the case you're meeting, knowing what the facts are and challenging their case, and this is a case that the public housing landlords will not have to meet.

The third issue of very serious importance to the low-income tenants of Etobicoke is vacancy decontrol. Councillor Walker has said that the evidence is not in that what was promised with vacancy decontrol would happen. We all knew what was promised: better units, more units, cheaper units. CMHC's stats do not support this.

1810

Vacancy decontrol endorses the free market approach to rent, yet you are also by this legislation going to give statutory increases for utilities and capital expenses. These are called the vagaries of the free market. This is the landlord getting with one hand and the landlord getting with the other hand. It's the free market and contract or it is not. It's a bit of a boon for landlords because they get to set the rents and then they get little perks if they run into problems. Every homeowner, every property owner knows the roof needs to be fixed, the furnace needs to be fixed, utilities are going to go up. You guys, businesspeople: Figure it out and set the rent. But they want insurance and a hedge against that, and they're being given that under this legislation and the last legislation.

I would like to turn it over to Rev. Hagerman. There's a new right that landlords are going to have, the right of inspection on simply 24 hours' notice. We would ask you to add one word, and that would be "annual." Certainly, I see a lot of sexual harassment and a lot of racial harassment, and I worry about the landlords who keep coming in. Over to Rev. Hagerman.

Rev. Kerri Hagerman: I'm here to put a human face on this last point. My story is about a Brampton homeowner—a businessman, a director in a well-known Mississauga company, a family man—who found himself in the uncomfortable position of having to rent his house. His well-appointed four-bedroom house, which he himself in many instances had renovated and redecorated, after being up for sale for many months, had just not sold. The larger house that he had purchased would soon be his, and he was facing the prospect of three mortgages, summer house included.

My story is also about a family of four, with two young children aged three and six, who became tenants of that Brampton home after relocating back to Ontario from Manitoba, settling in Brampton because it was close to work. I am one of those tenants, and the work that called me to Brampton was an appointment to serve at Emmanuel United Church, a congregation that was in the midst of a difficult transition.

As homeowner-landlord and tenant, our lives intersected in a good way at just the right time to meet both our needs, and we enjoyed a good year of friendly, cordial relations with this homeowner—I should say, newly-minted landlord—who was respectful and responsive, so good that when the lease expired a year later, neither landlord nor tenants felt a need to renew a lease, but discussed their various plans for the upcoming year and negotiated an agreement.

Homeowner-landlord decided he didn't like his new house and would put both his new houses up for sale in January 2006. He wanted to prepare it for that sale by replacing the carpet, which involved dismantling my study on which I was dependent for my work, replacing all of the upstairs front windows and repainting the hallways upstairs and down.

Tenants decided they would move to Toronto and asked if they could stay in the house until July 2006, when the appointment at Emmanuel United Church would end. The homeowner said yes, and in an e-mail wrote that they would put an August 1 closing date when the house went up for sale. Tenants were co-operative, packed away most of their children's toys and removed furniture as requested, and as the house was being prepared to sell, all the renovations took place, but so did a collision between tenants and landlord.

In a six-week period between January and February 2006, the landlord was in the rental unit—his house, but the tenant's home—more than 20 times. In January and February, the landlord was in the unit on six different Saturdays and six different Sundays for periods of time that could last up to three hours. Needless to say, as tenants, we felt that this seriously interfered with our quiet enjoyment of the rental unit.

On occasion, notice was given in writing, but more than often, it was just a casual indication that he'd be coming in for minor touch-ups or minor repairs or, as he would say, "Spend \$50 to make \$5,000," by replacing his common light fixture with a fancy one. On two occasions, the tenants just didn't know he was coming when he showed up. Then on February 17, the landlord informed the tenants that he had an offer to purchase the house, with a closing date of mid-May. We learned he had put the house up for sale without putting any closing date, failing to inform us that he had changed his plans.

From this point on, things went from bad to worse. We insisted that his entries be put in writing. We requested that he not come in the house anymore since we had to pack up and move by the end of March, and we wanted some quiet enjoyment that was so lacking and for him to just give us some peace as we packed up.

This seemed to infuriate him. He had served us notice, and he'd be coming in the house three more times in March for the purpose of inspection. This, after having been in the house more than 20 times in the last six weeks.

His behaviour degenerated from intrusiveness to harassment as we received an e-mail that falsely accused us of damaging his property. He was twisting facts, criticizing the behaviour of our children and calling our parenting skills and our judgment into question.

Feeling harassed, we took a rental unit in mid-March here in Toronto in order to be out of the house as soon as possible. We enlisted the help of good people to put a barrier between us and this landlord, so that when he came into the house we were not there but someone else was, to see exactly what he was doing and to be witnesses to the condition of his property.

When we left, I prepared an exit inspection report and had a real estate agent come to fill it in and be witness to the fact that we had left this property, that had sold within three weeks, in excellent condition. In that report, we insisted that any further communication or correspondence between us and the landlord would be carried out through this real estate agent.

I learned a lot about the Tenant Protection Act through this, and about the tribunal, as you can imagine. Apparently landlords can enter a house on 24 hours' notice. Please set limits to how often entry can take place.

Apparently, landlords can enter any time between 8 a.m. and 8 p.m. Please demand that landlords specify the time that they will be entering, at least giving a one- to

two-hour range, because when things degenerate, they do degenerate.

The Chair: You have one minute left. You can keep going if you have more to say.

Mr. John Bagnall: Just briefly, I'm the co-chair of the North Etobicoke Revitalization Project housing committee. I just want to emphasize that the concerns and recommendations that Karen and Rev. Hagerman have put forward have been shared by a large number of other agencies working with low-income tenants in North Etobicoke.

We've been meeting regularly as a group, working on tenant issues, and we include Albion Neighbourhood Services, the agency I work for. We have extensive programs in terms of housing help, rent bank and other eviction prevention activities; as well, Rexdale Women's Centre and Dejinta Beesha.

I just want to emphasize that these concerns are broadly shared by other agencies in North Etobicoke working on issues of low-income tenants.

The Chair: Thank you all very much for being here today. I'd like to thank our witnesses, members of committee and staff for their participation in the hearings.

I just remind the committee that the summary of recommendations in the big package you received today is about second from the last in the package. I'd also remind committee members that your amendments need to be in by 12 noon on Wednesday, June 7, 2006.

The committee now stands adjourned until 3:30 p.m., Wednesday, June 7, 2006, when we begin clause-by-clause consideration of this bill.

The committee adjourned at 1817.



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**Standing committee on
general government**

Residential Tenancies Act, 2006

**Comité permanent des
affaires gouvernementales**

Loi de 2006 sur la location
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 7 June 2006

Mercredi 7 juin 2006

The committee met at 1534 in room 151.

RESIDENTIAL TENANCIES ACT, 2006

LOI DE 2006 SUR LA LOCATION
À USAGE D'HABITATION

Consideration of Bill 109, An Act to revise the law governing residential tenancies / Projet de loi 109, Loi révisant le droit régissant la location à usage d'habitation.

The Chair (Mrs. Linda Jeffrey): Good afternoon. The standing committee on general government is called to order. We're here today for clause-by-clause consideration of Bill 109, An Act to revise the law governing residential tenancies.

I'm going to read from the time allocation motion passed by the House on May 16, 2006, just to refresh everybody's memory:

"That the deadline for filing amendments to the bill with the clerk of the committee shall be 12 noon on June 7, 2006. On that day, at not later than 5 p.m. those amendments which have not been moved shall be deemed to have been moved, and the Chair of the committee shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill and any amendments thereto. The committee shall be authorized to meet beyond the normal hour of adjournment until completion of clause-by-clause consideration. Any division required shall be deferred until all remaining questions have been put and taken in succession with one 20-minute waiting period allowed pursuant to standing order 127(a); and

"That the committee shall report the bill to the House not later than Thursday, June 8, 2006. In the event that the committee fails to report the bill on that day, the bill shall be deemed to be passed by the committee and shall be deemed to be reported to and received by the House."

Just so members of the committee understand, after 5 o'clock the amendments are deemed moved, which means the members do not read them into the record, there is no debate on any of the amendments and any recorded votes have to be deferred until all the remaining questions have been put. The deferred votes must be taken in succession, and only one 20-minute recess is allowed.

Are there any comments, questions or amendments to the bill and, if so, which schedules and which sections?

Mr. Ernie Hardeman (Oxford): Madam Chair, on your comments: I don't disagree that those are the rules set down by the House, and thoroughly debated, so we're somewhat obligated to live by them, except that, having said that, I notice that the House, when the debate was taking place, did not realize that there were going to be 86 recommended amendments, many from the government side. We'll see a major change, hopefully, in the bill that, since it will not get further debate in the House, would require debate in this committee.

I think it makes somewhat of a mockery of the process when we go through that tight a timeline and then expect the House to deal with this as it goes back. If the Chair had read further on the recommendation from the House, when it goes in for third reading it will be called and only in the time left on that day will there be any further debate; then it will be third reading vote and that will be the end of the bill.

One of our presenters pointed out during the presentation that there will be some 38 days between the time the bill was introduced, all the public hearings held, the bill gets clause-by-clause and third reading debate, and is entered into law. I think that's really unacceptable for this type of bill that's going to have this type of impact on our community, and particularly all the people who made presentations and who have a right to expect their presentations to receive due consideration and due discussion as to whether that should or shouldn't become the law of the land. At this point, it's a nice way of saying I condemn the government for not putting this legislation forward—obviously, that's an obligation of government, but it's put in such a time frame that what people come in and say and do in the public presentation really becomes irrelevant because there isn't sufficient time to deal with the discussions as they've been made.

Secondly, it takes away the real purpose of this committee if we just sit here listening to 10-minute presentations, the vast majority of which have no room for questions or comments, and at the end of the presentation there's no time for discussing that which has been put before the committee.

I noticed as I was coming in the door a deputant who actually made a presentation to the committee and had some real concerns about the impact on a certain sector of our population—those living in condo rental units. Because of what he suggested, he would like an amendment to deal with that. I don't believe that we've had

sufficient time or sufficient information from the government side in order to deal with that issue. Recognizing that it's at the end of the bill, it will not be dealt with when 5 o'clock arrives and, in fact, it will go by the wayside, because government has decided that not only does it want this bill passed but it wants it back in the House tomorrow.

I just don't think that's providing the type of consultation with the public that they have a right to expect from government. I can say that I'm happy to be sitting on this side, where I don't have to take the wrath of the public for making such a mockery of the whole process in coming forward with this legislation.

Mr. Rosario Marchese (Trinity-Spadina): I just want to say briefly that I will have an opportunity in third reading debate, in our leadoff, to explain the deficiencies of the bill. So I'd rather get on with the amendments that we have.

Mr. Brad Duguid (Scarborough Centre): Just by way of a short response, Mr. Hardeman indicated that in his view the hearings were irrelevant. I take offence at that. I just look at the amendments that we have in front of us today, many of which, if not most, came as a result of those deputations. I think those who appeared before our committee gave terrific deputations, both in writing and in person, that we listened long and hard to and paid close attention to. As a result, we've come in with some amendments we think will make the legislation better. I can assure my opposition friends as well that there are some amendments they've brought forward that we're going to support too.

So in the interests of working together, we'll certainly look forward to the amendments. But after two and a half years of consultation, I think we've heard amply from the public at this point in time. It's time for us to make some decisions, and we will certainly move forward in that light.

1540

The Chair: No further debate? We're at part I, the introduction. Mr. Marchese, you have the first motion.

Mr. Marchese: I move that section 1 of the bill be amended by striking out "to provide protection for residential tenants from unlawful rent increases and unlawful evictions" and substituting "to provide protection for residential tenants".

Madam Chair, I'm going to skip the commentary where I can, where I think it might be self-evident, so I just move it.

The Chair: Thank you. Any further comments or debate?

Mr. Duguid: We will not be supporting that.

The Chair: Any further comments? Seeing none—

Mr. Marchese: Recorded vote.

Ayes

Hardeman, Marchese.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That motion is lost.

Shall section 1 carry? All those in favour? All those opposed? That's carried.

Committee, there are no amendments to sections 2 to 4. Shall sections 2 to 4 carry? All those in favour? All those opposed? That's carried.

Government motion on section 5, Mr. Rinaldi.

Mr. Lou Rinaldi (Northumberland): I move that clause 5(c) of the bill be struck out and the following substituted:

"(c) living accommodation that is a member unit of a non-profit housing co-operative."

The Chair: Comments or questions?

Mr. Hardeman: Can I get an explanation for that, please?

Mr. Duguid: It's just a wording change that brings this act in line with the co-operative housing act. It's here at the request of the Co-operative Housing Federation of Canada. You'll see another one somewhere later on similar to it.

The Chair: Any other comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 5, as amended, carry? All those in favour? All those opposed? That's carried.

Section 6, government motion, Mr. Jean-Marc Lalonde.

Mr. Jean-Marc Lalonde (Glengarry-Prescott-Russell): I move that subsection 6(1) of the bill be amended by striking out the portion before clause (a) and substituting the following:

"6. (1) Paragraphs 6, 7 and 8 of subsection 30(1) and sections 51, 52, 54, 55, 56, 104, 111 to 115, 117, 119 to 134, 136, 140 and 149 to 166 do not apply with respect to."

The Chair: Mr. Lalonde, could you repeat that last line? You've got one of the numbers wrong.

Mr. Lalonde:—"111 to 115, 117, 119 to 134, 136, 140 and 149 to 167 do not apply with respect to."

The Chair: Thank you. Comments or questions? Do we want to provide—

Interjection.

The Chair: A request has been made for some clarification.

Mr. Duguid: This is actually consequential to an amendment we'll be moving later on removing subsection 87(6), which is a section that provides that the board must dismiss the rent increase portion of rent arrears and eviction applications if serious maintenance issues or outstanding work orders exist. We're removing it not because we don't support it, but it's somewhere else in the bill, so it's redundant. This is consequential to that.

If you follow me on that, Mr. Hardeman, I'm very surprised.

Mr. Hardeman: Yes.

Mr. Marchese: It's redundant; move on.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Marchese, you have the next motion.

Mr. Marchese: I move that subsection 6(2) of the bill be struck out.

This removes the exemption of post-1991 units and post-1998 buildings.

The Chair: Any comment?

Mr. Marchese: That's it.

The Chair: Any further comments or questions?

Mr. Duguid: We will not be supporting that.

Mr. Marchese: Recorded vote.

Ayes

Marchese.

Nays

Duguid, Flynn, Hardeman, Lalonde, MacLeod, Rinaldi, Sergio.

The Chair: That motion is lost.

Shall section 6, as amended, carry? All those in favour? All those opposed? That's carried.

Section 7, government motion.

Mr. Mario Sergio (York West): I move that subsection 7(1) of the bill be amended by striking out "sections 51, 52, 54, 55 and 56, subsection 87(6), sections 95 to 99" in the portion before paragraph 1 and substituting "sections 51, 52, 54, 55, 56 and 95 to 99".

I so move.

The Chair: Comments or questions?

Mr. Hardeman: I accept that.

The Chair: No further comments or questions? All those in favour of the motion?

Sorry, Mr. Marchese, were you asking a question?

Mr. Marchese: I guess I'll speak to it in my next—I'm voting against this, obviously.

The Chair: All those in favour of the motion? All those opposed? That's carried.

Mr. Flynn.

Mr. Kevin Daniel Flynn (Oakville): I move that paragraph 4 of subsection 7(1) of the bill be struck out and the following substituted—

Mr. Marchese: Are you reading section 8?

The Chair: We're on 7; page 6.

Mr. Flynn: Let me start over.

I move that paragraph 4 of subsection 7(1) of the bill be struck out and the following substituted:

"4. A rental unit that is a non-member unit of a non-profit housing co-operative."

The Chair: Comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Marchese, I believe the next item is actually not a motion and it's out of order, but will let you speak.

Mr. Marchese: Exactly. Given the ruling, my point here is that we're voting against section 7 of the bill because it exempts social housing from any of the bill's provisions. We think a lot of these people who are so vulnerable and won't have the opportunity to go and appeal issues as they relate to rent subsidies—it's going to hurt a whole lot of those people.

The Chair: Any comments or questions? No? Shall section 7, as amended, carry? All those in favour? All those opposed? That's carried.

Section 8, a government motion, Mr. Rinaldi.

Mr. Rinaldi: I move that subsection 8(1) of the bill be amended by striking out "paragraph 6 of subsection 30(1), subsection 87(6) and part VII" and substituting "paragraph 6 of subsection 30(1) and part VII".

The Chair: I'm seeing a quizzical look. Could you explain this, Mr. Duguid?

Mr. Duguid: You've heard this explanation before. It's consistent with the government motion to eliminate subsection 87(6).

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 8, as amended, carry? All those in favour? All those opposed? That's carried.

There are no changes to section 9. Shall section 9 carry? All those in favour? All those opposed? That's carried.

Part II, which is the tenancy agreements—there are no changes from sections 10 through 19. Shall they carry? All those in favour? All those opposed? That's carried.

1550

Mr. Duguid: On a point of order, Chair: The next item, I think, is a government motion. There's an NDP motion that's identical to it, which we're happy to support. On your advice—

The Chair: Thank you. We're not quite there yet.

Mr. Duguid: Oh, I'm sorry.

The Chair: But I will get to you. I'm trying to do my sections in order, otherwise I'll be in trouble.

In part III, which is "Responsibilities of landlords," sections 20 through 26, there are no changes. Shall they carry? All those in favour? All those opposed? That's carried.

So we are now at section 27. Mr. Duguid, I will let you finish your statement.

Mr. Duguid: The next motion is a government motion but it's identical to an NDP motion that follows. I'm asking your advice. If we can change the order, we'd be happy to vote in favour of the NDP motion. We could withdraw our motion, but my preference would be just to change the order and take the NDP motion first.

Mr. Marchese: The government can move it and I'll support it.

The Chair: I appreciate when people are being nice. They're going to let you go first. So, Mr. Marchese, I'm going to let you go first.

Mr. Marchese: I move that paragraph 4 of subsection 27(1) of the bill be struck out and the following substituted:

“4. To carry out an inspection of the rental unit, if,

“i. the inspection is for the purpose of determining whether or not the rental unit is in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards, consistent with the landlord’s obligations under subsection 20(1) or section 161, and

“ii. it is reasonable to carry out the inspection.”

This section, we argued, was, as many of the tenants said, ripe for abuse. The ability to inspect must be qualified by the word “reasonable,” which is the language we support.

The Chair: Any comments or questions? Seeing none, all those in favour of the motion? All those opposed? That’s carried.

Mr. Duguid, I understand you’re going to withdraw the next motion.

Mr. Duguid: We’ll withdraw our motion, Madam Chair.

The Chair: That’s withdrawn.

Shall section 27, as amended, carry? All those in favour? All those opposed? That’s carried.

Sections 28 and 29 have no changes. Shall they carry? All those in favour? All those opposed? That’s carried.

Section 30: There is a Conservative motion.

Mr. Hardeman: I move that paragraphs 6, 7 and 8 of subsection 30(1) of the bill be struck out.

The Chair: Any comments or questions?

Mr. Duguid: We cannot support that. That would remove the OPRI provisions. It would water down our efforts to try and improve maintenance. So we won’t be supporting it.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed?

Ms. Lisa MacLeod (Nepean–Carleton): Recorded vote.

The Chair: Sorry, you’re going to have to say it a little earlier than that. That’s lost.

The next motion, Mr. Hardeman.

Mr. Hardeman: I move that subsection 30(1) of the bill be amended by,

- (a) striking out subparagraph 6ii;
- (b) striking out subparagraph 7ii; and
- (c) striking out subparagraph 8ii.

I request a recorded vote.

The Chair: Any comments or questions?

Mr. Duguid: Simply to say we will not be supporting that.

The Chair: A recorded vote has been requested.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That vote is lost.

Mr. Hardeman, you have the floor.

Mr. Hardeman: I move that section 30 of the bill be amended by adding the following subsections:

“Order under par. 6 of subs. (1)

“(3) Once the landlord has completed the items in work orders under subparagraph 6i of subsection (1), and completed the specified repairs or replacements or other work under subparagraph 6ii of subsection (1), as applicable, the landlord may charge a new rent to the new tenant, provided the landlord gave notice to the new tenant of the new rent prior to entering into the new tenancy agreement.

“Order under par. 7 of subs. (1)

“(4) Once the landlord has completed the items in work orders under subparagraph 7i of subsection (1), and completed the specified repairs or replacements or other work under subparagraph 7ii of subsection (1), as applicable,

“(a) the landlord may give notice of rent increase for the rental unit; and

“(b) despite section 120, the landlord may increase the rent to the amount the landlord could have charged if the prohibition order under paragraph 7 of subsection (1) had not been made, and the landlord had taken all allowable rent increases.

“Order under par. 8 of subs. (1)

“(5) Once the landlord has completed the items in work orders under subparagraph 8i of subsection (1), and completed the specified repairs or replacements or other work under subparagraph 8ii of subsection (1), as applicable,

“(a) the landlord may take the rent increase for subsequent rent periods, and for the purposes of section 119 the rent increase shall be deemed to have taken place as if the prohibition order under paragraph 8 of subsection (1) had not been made; and

“(b) despite section 120, the landlord may increase the rent to the amount the landlord could have charged if the prohibition order under paragraph 8 of subsection (1) had not been made, and the landlord had taken all allowable rent increases.”

The Chair: Any comments or questions?

Mr. Duguid: A question: I thought we had this covered under subsections 117(1) and (2). I guess I don’t need a detailed explanation, but are you of the view that that may not be covered off elsewhere?

Mr. Hardeman: My understanding is that it’s required here in order to proceed in an orderly fashion for the continuation after the work order has been complied with, to go back and do the rent increases as what would have been eligible prior to the increases.

Mr. Duguid: My information is that we have this covered off already, and as a result we won’t be supporting this.

The Chair: Any further comments or questions?

Mr. Hardeman: A recorded vote.

The Chair: A recorded vote has been requested.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That's lost.

Shall section 30 carry? All those in favour? All those opposed? That's carried.

There are no changes to section 31. Shall it carry? All those in favour? All those opposed? That's carried.

Section 32, a government motion.

Mr. Lalonde: I move that section 32 of the bill be amended by striking out "that the tenant be evicted on the date that the tenancy is ordered terminated" at the end and substituting "that the tenant be evicted, effective not earlier than the termination date specified in the order."

The Chair: Comments or questions?

Mr. Duguid: Just to clarify, this is fixing a drafting error. It came through our legal department.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 32, as amended, carry? All those in favour? All those opposed? That's carried.

There are no changes in part IV, "Responsibilities of tenants," section 33. Shall it carry? All those in favour? All those opposed? That's carried.

Section 34. We have a government motion.

Mr. Duguid: Madam Chair, on a point of order: We'd be happy to hold off on this and allow the next motion, the NDP motion, to carry.

The Chair: Okay. Mr. Marchese, you have the floor.

Mr. Marchese: I move that section 34 of the bill be amended by striking out "caused by the conduct" and substituting "caused by the wilful or negligent conduct."

I think this is an important addition that we're adding here. Otherwise, "caused by the conduct" could have many reasons as to why some disrepair would happen. We believe that the language of "wilful" and/or "negligent" should be there, which was consistent under the old TPA. We think that is a higher threshold to subscribe to.

The Chair: Any further comments or questions? Seeing none, shall the motion carry? All those in favour? All those opposed? That's carried.

Mr. Duguid, I'm understanding you're going to withdraw that government motion?

Mr. Duguid: Yes, I'll withdraw the government motion.

Mr. Hardeman: Madam Chair, If I could, if we're going to have more of these, I would suggest that the original one be withdrawn before the second one comes

forward. It seems inappropriate to say, "We will support yours, but we don't know for sure whether you're going to bring it forward, so we want to hold this one in abeyance." It seems to me if this is the order we're dealing with, then just withdraw it. I'm sure that the New Democratic member would not then proceed with his because you had withdrawn yours.

Mr. Duguid: I'm sure of that as well, Madam Chair, but I'm much more comfortable with the way we're doing it. I think it works fine.

1600

The Chair: Shall section 34, as amended, carry? All those in favour? All those opposed? That's carried.

There are no changes to section 35 or 36. Shall they carry? All those in favour? All those opposed? That's carried.

Part V, "Security of Tenure and Termination of Tenancies": There are no changes within sections 37 through 40. Shall they carry? All those in favour? All those opposed? That's carried.

Section 41: We have an NDP motion.

Mr. Marchese: I move that section 41 of the bill be amended by,

"(a) striking out 'before 72 hours have elapsed' in subsection (2) and substituting 'before seven days have elapsed'; and

"(b) striking out 'within the 72 hours' in subsection (3) and substituting 'within the seven days.'"

We recognize the government has increased the time for a tenant to be able to retrieve property once an eviction order has been enforced. We think that many tenants need a little more time and that a week would be a little more appropriate. Many of the organizations that have come before us have asked for two weeks. We think a week is reasonable.

The Chair: Any further comments or questions?

Mr. Duguid: We understand the arguments being put forward for this, but we won't be supporting it. We think the 72 hours is acceptable, given the fact that most tenants, in fact all tenants, would have had at least a couple of more weeks' notice of this happening, so we think moving from 48 hours to 72 hours will work sufficiently.

Mr. Marchese: A recorded vote.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? A recorded vote has been requested.

Ayes

Marchese.

Nays

Duguid, Flynn, Hardeman, Lalonde, MacLeod, Rinaldi, Sergio.

The Chair: That's lost.

A government motion, Mr Sergio.

Mr. Sergio: I move that section 41 of the bill be amended by adding the following subsection:

"Enforcement of landlord obligations

"(6) If, on application by a former tenant, the board determines that a landlord has breached an obligation under subsection (2) or (3), the board may do one or more of the following:

"1. Order that the landlord not breach the obligation again.

"2. Order that the landlord return to the former tenant property of the former tenant that is in the possession or control of the landlord.

"3. Order that the landlord pay a specified sum to the former tenant for,

"i. the reasonable costs that the former tenant has incurred or will incur in repairing or, where repairing is not reasonable, replacing property of the former tenant that was damaged, destroyed or disposed of as a result of the landlord's breach, and

"ii. other reasonable out-of-pocket expenses that the former tenant has incurred or will incur as a result of the landlord's breach.

"4. Order that the landlord pay to the board an administrative fine not exceeding the greater of \$10,000 and the monetary jurisdiction of the small claims court.

"5. Make any other order that it considers appropriate."

The Chair: Any comments or questions?

Mr. Hardeman: I have a question on the penalty. Is this the first that the penalty appears in the bill?

Mr. Duguid: I can't answer that. I can explain what this is here for. Right now, there is no remedy other than small claims court if a landlord doesn't dispose of a tenant's goods in the way they should when a tenant has been evicted. This gives them a remedy to apply to the board so they don't have to go to small claims court to seek justice or to seek compensation.

The Chair: Any further comments or questions?

Mr. Hardeman: My concern is that, if this is a new section, it's a penalty section and something that I really think should have been discussed during the public hearings process. We now have the new board that's being structured having the authority to fine someone \$10,000 for something there was a dispute over, whether the landlord or the tenant was responsible. All of a sudden this board has the power to levy a fine of up to \$10,000. I think that's quite a big issue as it relates to the landlord-tenant relationship. I really have a concern that that would come in during the short term of the clause-by-clause we're dealing with now, as opposed to having had that as part of the debate. We may very well have heard a lot of discussion from either party on whether that was an appropriate remedy or whether the amount was appropriate or things like that. I wonder if this is just the same situation, only a different board, or is this a new penalty clause?

Mr. Duguid: This would be a new remedy. It did come out of the deputations. The Advocacy Centre for Tenants Ontario made a deputation that requested this

change. It only applies to landlords who illegally dispose of tenants' property when an eviction has taken place. It's not something your average landlord is going to have to worry about, but it's something that ensures they have to comply with the act and the law, and it's something we're quite happy to support.

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested.

Ayes

Duguid, Flynn, Lalonde, Marchese, Rinaldi, Sergio.

Nays

Hardeman, MacLeod.

The Chair: That's carried.

Next motion, Mr. Marchese.

Mr. Marchese: I'll withdraw mine.

The Chair: Shall section 41, as amended, carry? All those in favour? All those opposed? That's carried.

There are no changes for sections 42 through 47. Shall they carry? All those in favour? All those opposed? That's carried.

We're at section 48: We have a government motion, Mr. Flynn.

Mr. Flynn: I move that clause 48(1)(d) of the bill be struck out and the following substituted:

"(d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located."

The Chair: Comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Marchese, you have the next motion.

Mr. Marchese: I'll withdraw mine.

The Chair: Shall section 48, as amended, carry? All those in favour? All those opposed? That's carried.

Section 49: Government motion, Mr. Rinaldi.

Mr. Rinaldi: I move that clause 49(1)(d) of the bill be struck out and the following substituted:

"(d) a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child or parent of the purchaser or the purchaser's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located.

The Chair: Comments or questions?

Mr. Hardeman: Could I get, from the parliamentary assistant, an explanation of the need for this? This seems to be the same as the previous one. It must deal with a different part of it.

Mr. Duguid: Yes, it is. It's the same as the previous one, and it provides clarity with regard to who is actually in the unit, ensures that the person is in the unit and ensures that future intent is included as well. It's largely a technical amendment.

Mr. Hardeman: Thank you.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Marchese, you have the next motion.

Mr. Marchese: I'll withdraw mine.

The Chair: Thank you.

Government motion, Mr. Lalonde.

Mr. Lalonde: I move that clause 49(2)(d) of the bill be struck out and the following substituted:

"(d) a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child or parent of the purchaser or the purchaser's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land-lease community in which the rental unit is located."

1610

The Chair: Comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Marchese, you have the next motion.

Mr. Marchese: I'll withdraw mine.

The Chair: Thank you. Shall section 49, as amended, carry? All those in favour? All those opposed? That's carried.

Committee, there are no changes from sections 50 through 56. Shall they carry? All those in favour? All those opposed? That's carried.

We're at section 57, a government motion.

Mr. Sergio: I move that subsection 57(1) of the bill be struck out and the following substituted:

"57. (1) The board may make an order described in subsection (3) if, on application by a former tenant of a rental unit, the board determines that,

"(a) the landlord gave a notice of termination under section 48 in bad faith, the former tenant vacated the rental unit as a result of the notice or as a result of an application to or order made by the board based on the notice, and no person referred to in clause 48(1)(a), (b), (c) or (d) occupied the rental unit within a reasonable time after the former tenant vacated the rental unit;

"(b) the landlord gave a notice of termination under section 49 in bad faith, the former tenant vacated the rental unit as a result of the notice or as a result of an application to or order made by the board based on the notice, and no person referred to in clause 49(1)(a), (b), (c) or (d) or 49(2)(a), (b), (c) or (d) occupied the rental unit within a reasonable time after the former tenant vacated the rental unit; or

"(c) the landlord gave a notice of termination under section 50 in bad faith, the former tenant vacated the rental unit as a result of the notice or as a result of an application to or order made by the board based on the

notice, and the landlord did not demolish, convert or repair or renovate the rental unit within a reasonable time after the former tenant vacated the rental unit."

The Chair: Thank you. Any comments or questions? Seeing none, all those—sorry, Mr. Hardeman.

Mr. Hardeman: Just a question on the wording in it, if the tenant vacated the unit as a result of the notice or the application. My question would be, if they got the notice and the tenant moved out, what's the time frame for the point they could say that they hadn't fulfilled their obligations and it was a wrongful notice given, that it never got to the order part?

Mr. Duguid: It would be the same in either case. There are two ways a tenant can vacate: One is that they'll vacate upon receiving notice and just go, or they'll vacate upon an application and receiving an order and have to go. What this does is ensure that under both of those circumstances, rather than just one of them, if there's an eviction on bad faith, the tenant would have the same remedies either way.

In terms of the time frame, I don't want to guess. I think a year is what I've heard, but I think we'd better check with staff to see if there is a particular time frame, because I don't have that. Is it one year?

Interjection.

Mr. Duguid: One year; 12 months.

Mr. Hardeman: I guess my concern is that if it's done just on notice—we'll use the example that we have a family member moving into the apartment and that doesn't happen. If it was under the application process, that would come out during the application hearing. The hearing officer could decide whether they thought it was appropriate and given in good or bad faith. But if it's given in bad faith and the family member doesn't move in, how long could the former tenant challenge that?

Mr. Duguid: The answer would be one year.

The Chair: Any further comments or questions? All those in favour of the motion? All those opposed? That's carried.

Mr. Marchese, you have the next motion.

Mr. Marchese: I'll withdraw mine.

The Chair: Thank you. Next government motion?

Mr. Flynn: I move that section 57 of the bill be amended by adding the following subsection:

"Previous determination of good faith

"(4) In an application under subsection (1), the board may find that the landlord gave a notice of termination in bad faith despite a previous finding by the board to the contrary."

The Chair: Any comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 57, as amended, carry? All those in favour? All those opposed? That's carried.

Committee, there are no changes in sections 58 through 64. Shall they carry? All those in favour? All those opposed? That's carried.

We're at section 65, a government motion.

Mr. Lalonde: I move that subsection 65(1) of the bill be amended by striking out “a building containing not more than six residential units” and substituting “a building containing not more than three residential units.”

The Chair: Any comments or questions?

Mr. Hardeman: Obviously, this is going to put a greater onus on a number of residential developments. I'm just wondering, in preparing this amendment, whether there are any numbers available that would tell us how big an impact this is going to have on the rental market. What portion of the rental market is actually going to be covered by reducing the number from six to three units?

Mr. Duguid: I don't have, off the top of my head, numbers that would suggest that. I don't think there will be any impact at all, other than—the reason why we've reduced it from six to three is that when we're dealing with landlords who are residing in units, if there are six units, obviously one of six units is probably going to be a lot less, and you're looking at a larger residential rental accommodation in that case. With three, you sort of picture the basement apartment, the main floor and maybe an upper floor being rented out, with the landlord living in one of the three. So we just thought it would probably better apply to three. I believe ACTO had asked for two units and I think the NDP had a motion for four. We thought three was the appropriate number.

Mr. Marchese: You guys are great.

Mr. Duguid: Thank you. We may use that down the—

The Chair: Any further comments or questions?

Mr. Hardeman: Recorded vote.

Ayes

Duguid, Flynn, Lalonde, Marchese, Sergio.

Nays

Hardeman, MacLeod.

The Chair: That's carried.

Mr. Marchese, you have an equally good motion, which is a duplicate.

Mr. Marchese: Thank you, Madam Chair. You're very kind. I'll withdraw mine.

The Chair: Thank you.

Shall section 65, as amended, carry? All those in favour? All those opposed? That's carried.

Committee, there are no changes to sections 66 through 72. Shall they carry? All those in favour? All those opposed? That's carried.

We're at section 73. Mr. Marchese.

Mr. Marchese: I move that clause 73(b) of the bill be amended by striking out “or” at the end of subclause (i) and by striking out subclause (ii).

I'll simply read out the explanation offered by one of the presenters, which says that the proposed section allowing an eviction to be granted when a permit has not

been issued will undermine municipal bylaws that are designed to protect rental housing. Some municipalities have passed valid bylaws that only permit demolition or conversion on buildings not occupied by residential tenants. This section effectively allows landlords to circumvent such municipal bylaws by permitting them to evict tenants when the city refuses to issue permits. My amendment would prevent that from happening.

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The Chair: Any further comments or questions? Seeing none, all those in favour of the motion?

Mr. Marchese: Recorded vote.

Ayes

Marchese.

Nays

Duguid, Flynn, Hardeman, Lalonde, MacLeod, Sergio.

The Chair: That's lost.

Shall section 73 carry?

All those in favour? All those opposed? That's carried.

Committee, there are no changes to sections 74 through 79. Shall they carry?

All those in favour? All those opposed? That's carried.

We're at section 80, on eviction orders. Government motion, Mr. Sergio.

Mr. Sergio: I move that clause 80(2)(b) of the bill be amended by striking out “notice of termination under clause 63(1)(b)” and substituting “notice of termination under clause 63(1)(b) or subsection 66(1)”.

The Chair: Any comments or questions? Mr. Hardeman, would you like an explanation?

Mr. Hardeman: Yes, please.

Mr. Duguid: Quickly, what this does is ensure that the fast-track eviction process can also be utilized for safety issues as well as wilful damage and reasonable enjoyment provisions.

The Chair: Any further comments or questions?

All those in favour of the motion? All those opposed?

That's carried.

Mr. Marchese.

Mr. Marchese: I move that subsection 80(2) of the bill be struck out.

Again, I'll read another explanation which I think very clearly states why. This section provides that an order can be enforceable prior to the termination date in the notice under subsection 80(2), where the notice is given for wilful damage or if the premises are being used in a manner inconsistent with residential use and the use has caused or may cause significant undue damage to the premises. The greatly expedited procedure may be subject to abuse by bad landlords, who may be able to obtain and enforce an eviction order based on the mere allegation before an innocent tenant may even be aware that eviction proceedings have been commenced. The fast-track provision may also have an adverse impact on

tenants with disabilities, particularly where the case involves mental illness, who are unable to respond in the short time frames.

The Chair: Any further comments or questions?

Mr. Marchese: On a recorded vote, Madam Chair.

Ayes

Marchese.

Nays

Duguid, Flynn, Hardeman, Lalonde, Sergio.

The Chair: That's lost.

Shall section 80, as amended, carry?

All those in favour? All those opposed? That's carried.

There are no changes to section 81. Shall it carry?

All those in favour? All those opposed? That's carried.

We're at section 82. Mr. Hardeman, you have a motion.

Mr. Hardeman: I move that subsection 82(1) of the bill be amended by adding at the end "provided the tenant has given the landlord notice of the tenant's intention to raise the issue and particulars of the issue at least five days before the hearing, and has met any other prescribed condition."

This is to add in there the great concern we heard from a lot of people—the landlords—that bringing it up at the last minute is not called "natural justice." Everyone needs the ability to be able to defend the situation they have to deal with. Secondly, we do feel that there's going to be, as was presented to us, an awful lot of backlog. Every time a new item is brought up at the hearing, natural justice would say that the landlord would have the ability to have a deferral and have it go back again so they could defend that. We think this would provide the ability to have it so that if it was mandatory that they give five days' notice of that, at least everyone would know what was going to be appearing at the hearing.

The Chair: Any comments or questions? Seeing none, all those in favour of the motion?

Mr. Hardeman: Recorded vote.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That motion is lost.

Mr. Hardeman, I'm going to rule your next motion out of order, but you can speak to it.

Mr. Hardeman: Madam Chair, if it's out of order, I wouldn't want to speak to it.

The Chair: Thank you.

Shall section 82 carry? All those in favour? All those opposed? That's carried.

Section 83, Mr. Marchese.

Mr. Marchese: I move that subsection 83(3) of the bill be amended by,

(a) striking out "the reason" at the beginning of clause (b) and substituting "a reason";

(b) striking out "the reason" at the beginning of clause (c) and substituting "a reason";

(c) striking out "the reason" at the beginning of clause (d) and substituting "a reason"; and

(d) striking out "the reason" at the beginning of clause (e) and substituting "a reason".

The LTPA changed the mandatory evictions from the previous legislation, which provided that one of the items listed be "a reason," as opposed to "the reason." The use of the word "the" sets too high a threshold in these cases. I think that's a good argument.

The Chair: Any further comments or questions?

Mr. Marchese: On a recorded vote, Madam Chair.

Ayes

Marchese.

Nays

Duguid, Flynn, Hardeman, Lalonde, MacLeod, Rinaldi, Sergio.

The Chair: That motion is lost.

Shall section 83 carry?

All those in favour? All those opposed? That's carried.

Sections 84 through 86 have no changes. Shall they carry?

All those in favour? All those opposed? That is carried.

Section 87: government motion, Mr. Rinaldi. Nobody's looking at me. I'm going to just choose.

Mr. Rinaldi: I move that subsection 87(6) of the bill be struck out.

The Chair: Any comments or questions? Mr. Hardeman, did you want an explanation?

Mr. Hardeman: I need an explanation as to why that's being removed.

The Chair: Yes. Mr. Duguid.

Mr. Duguid: I'll read it out, because it's pretty technical. The provision for dismissing the rent increase portion of rent arrears would be redundant, as tenants under section 82 would be allowed to raise any claim in response to applications based on rent arrears. Tenant remedies would include an abatement of rent, an order requiring repairs, an order prohibiting rent increases or any other remedy considered appropriate by the board. In short, it's already in there; it's redundant.

Mr. Hardeman: Much clearer now, Madam Chair.

Laughter.

The Chair: Clear as mud, right?

Mr. Duguid: Mr. Hardeman is such a quick study.

The Chair: Any other further comments or questions?

Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 87, as amended, carry? All those in favour? All those opposed? That's carried.

Section 88 has no changes. Shall it carry? All those in favour? All those opposed? That's carried.

Section 89: government motion.

Mr. Duguid: Chair, we're happy to hear the NDP motion prior to this one.

The Chair: Okay. Mr. Marchese, you have the floor.

Mr. Marchese: They're too magnanimous, Madam Chair.

The Chair: They are. You're playing so nicely. This is going really well.

Mr. Marchese: I move that subsection 89(1) of the bill be amended by striking out "causes undue damage" and substituting "wilfully or negligently causes undue damage."

It's self-explanatory.

The Chair: Thank you. Any further comments or questions? Mr. Hardeman.

Mr. Hardeman: I'm just wondering, on the legal term, whether "undue" is any different from "wilful or negligently undue." Undue damage is not normal damage, so it would seem to me the descriptive term is just that. I don't object to it being there. So for the sake of time, I'll leave it at that.

Mr. Marchese: There you go.

The Chair: That's nice.

All those in favour of the motion? All those opposed? That's carried.

I presume, Mr. Duguid, you're going to withdraw the next motion, which is 38, right?

Mr. Duguid: Let me just check to make sure. I believe so—38?

The Chair: Which was the one that you just said was exactly the same.

Mr. Duguid: Yes.

The Chair: Thank you.

Shall section 89, as amended, carry? All those in favour? All those opposed? Carried.

Committee, there are no changes from sections 90 through 94. Shall they carry?

All those in favour? All those opposed? That's carried.

We're at part VI. Sections 95 through 97 have no changes. Shall they carry?

All those in favour? All those opposed? That's carried.

We're at section 98: government motion. Mr. Flynn.

Mr. Flynn: I move that subsection 98(6) of the bill be amended by striking out "that the tenant be evicted on the date that the tenancy is ordered terminated" at the end and substituting "that the tenant be evicted, effective not earlier than the termination date specified in the order."

The Chair: Comments or questions? Mr. Hardeman.

Mr. Hardeman: An explanation, please.

1630

Mr. Duguid: It just fixes a drafting error to ensure that these orders are effective on the eviction dates set out in the order.

The Chair: No further comments or questions? Shall it carry? Those in favour? All those opposed? That's carried.

Shall section 98, as amended, carry? All those in favour? All those opposed? That's carried.

Sections 99 through 104 have no changes. All those in favour? All those opposed? That's carried.

We're at Part VII, Rules relating to rent. Section 105 has no changes. Shall it carry? All those in favour? All those opposed? That's carried.

Section 106; Mr. Marchese.

Mr. Marchese: I move that section 106 of the bill be amended by,

(a) striking out "at a rate equal to the guideline determined under section 120 that is in effect at the time payment becomes due" at the end of subsection (6) and substituting "at the rate of 6% per year;" and

(b) striking out subsection (8).

What this does is to restore the 6% rule. You will recall that Mr. McIntyre—who was one of the tenant activists here, along with many others—reminded the government members in particular and others that the 6% rule has been in effect for 35 years or longer. The revolutionary move made by the Liberals is incomprehensible to some of us. This will be of great benefit to the landlord. I can guarantee this does nothing for the tenant. Many of the big landlords will be very happy that the Liberals have accommodated them in this way, but we think that it's incredibly generous to the landlord and it ought not to be the case. The rule should continue to be as it was. If Mr. Duguid is not going to speak, I'm going to ask for a recorded vote right now.

The Chair: Mr. Duguid, did you want to speak?

Mr. Duguid: Sure. We considered this very carefully in going through the consultations and we just couldn't justify having landlords pay this nominal fee of 6% when it's got nothing to do with the rate of interest or anything like that. We thought it was fair for landlords if they are holding tenants' money—which they are, with their first and last months' rent—that the amount of interest they're paying on that have some relationship with a fair interest rate. This is part of our efforts. We know we've swung the pendulum back towards tenants in this legislation. We feel we've reached a fair and balanced place with this legislation, but we felt this is one of the areas that we should improve the legislation for landlords.

Mr. Marchese: I'm not sure how the government could claim that—they simply cannot justify this. This is making it fair for the landlords, he argues. He says that they're just holding the money of the tenant. Sorry, Mr. Duguid, but they're investing this money that they're taking from the tenant, and they're investing at a higher rate of return than they will actually pay out based on what you're doing. I'm not sure how you could argue this is fair to the landlord. This has not swung back to the

tenants, that some of the amendments you've made are much further than they used to be. I will be attacking your government on the fact that you've maintained vacancy decontrol, which is the biggest violation of your promise, which is to come further down in terms of the debate. But to justify this on the basis of your remarks is just terrible.

The Chair: Further comments or questions? Seeing none, a recorded vote has been requested on this item.

Ayes

Marchese.

Nays

Duguid, Flynn, Hardeman, Lalonde, MacLeod, Rinaldi, Sergio.

The Chair: The vote is lost.

Shall section 106 carry? All those in favour? All those opposed? That's carried.

Committee, there are no changes in sections 107 through 112. Shall they carry? All those in favour? All those opposed? That's carried.

We're at section 113. Mr. Marchese.

Mr. Marchese: I move that section 113 of the bill be struck out and the following substituted:

"Lawful rent for new tenant

"113. The lawful rent for the first rental period for a new tenant under a new tenancy agreement is the lesser of the following amounts:

"1. The lawful rent payable by the previous tenant, plus any lawful increases permitted by this part.

"2. The rent first charged to the new tenant."

This would have the effect of eliminating vacancy decontrol. This is an opportunity to speak to it because, for me, this is one of the most important things about what this government has not done.

The way the Conservative government eliminated rent control was to institute vacancy decontrol. That's how they did it. Without ending rent control they simply instituted vacancy decontrol. You will recall that I've argued in the debates in the Legislature that 75% of all tenants, according to a study done by the previous Conservative government by Monsieur Lampert, I believe it was, move within a five-year period. What that means is that this is where the landlord has an opportunity to increase its rent or their rent as high as they can go, and they have done so. They have increased rents all over Ontario. There is no exception in terms of where you've had landlords where you've had landlords taking advantage of a tenant moving and not taking the opportunity to increase their rents. They have done so, and why wouldn't they? That's what vacancy decontrol was all about, to allow the landlord to increase rents.

We know that there are a whole lot of people who can't afford these rents. Some who might be blessed to be able to have good incomes can accommodate the higher

increases; many people of modest income, and that includes most immigrants who come to this country, who work on minimum wage and who work at two or three jobs to make ends meet, simply cannot afford these rents. Many of the tenants are paying beyond the 30% limit of what is reasonably expected of them to be paying from their income. Many are paying 50% of their income on rent. We are putting an incredible burden on a whole lot of tenants in terms of their ability to pay the rents.

You are continuing with what the Conservative government did. You promised to bring back real rent control. This included the whole notion of getting out of vacancy decontrol. You will argue about what kind of rules you had about vacancy decontrol, but your promise was that you would bring back real rent controls, and you haven't done that. Ending vacancy decontrol was one of the ways to do it. You have brought nothing back that would give tenants some measure of control or some protection from higher increases that they've been hit by on a regular basis.

This is one of the most egregious violations of your promises prior to the 2003 election. I think we're going to hold you accountable to that. In third reading we will remind the citizens watching the program about that broken promise, and we will do that on a regular basis till the next election.

On a recorded vote, Madam Chair, when the time comes up.

The Chair: Yes. Any further comments or questions?

Mr. Duguid: I appreciate the comments of Mr. Marchese. This was a tough decision for us and one of the things that we had to consider very carefully as a caucus, as a cabinet, as a government.

Our original proposal, which was drafted while we were in opposition, was to replace vacancy decontrol with a system of regional decontrol at about a 3% threshold for vacancy rates, which would have had the effect, given the current vacancy rates, of doing away with rent controls entirely through a good part of the province, certainly in Toronto and most urban areas, given the vacancy rate now in most of Ontario is above 3%. I think even Howard Hampton at one time used this proposal in a speech, the possibility that he would support something like this.

A couple of things: First, the change in the rental housing market, both the change in the vacancy rate, which was a very substantial and a very abrupt change that's taken place over the last two years, as well as the health of the rental housing market and the investment taking place in terms of units. That's something we've seen over the course of the last couple of years that led us to conclude that had we done away with vacancy decontrol and replaced it with a system of regional decontrol, there may well have been some impact in terms of investment in the market. The last thing we would want to do for tenants is negatively impact what is, at the moment, a relatively healthy rental market. That's something that would not do tenants any favours; obviously it wouldn't do landlords any favours either. So we

concluded that it's in the public interest and in the best interests of all involved, tenants and landlords, to not move in that direction. It was a tough decision for us to make—we had a considerable amount of internal debate about it—but we concluded that we would act in what we felt were the best interests of the tenants overall in not impacting that healthy rental market.

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We also heard from landlords and tenants through the two-and-a-half-year period where we did consult vigorously. Neither landlords nor tenants supported the concept of vacancy decontrol. Both had concerns about it for different reasons. As a result of the consultations—what we heard from landlords and tenants—the changing rental housing market and our desire to ensure that we maintained a healthy rental housing market, we determined that the best thing we could do for both landlords and tenants was to not impact vacancy decontrol and not implement a system of regional decontrol.

Mr. Hardeman: I just want to say that I was part of the government and part of the committee that dealt with the Tenant Protection Act, where in fact vacancy decontrol was put in place, so I'm not going to be here today to say that I would support this motion to remove it. Having said that, I do think it becomes very important that everyone realizes, as the mover of this motion suggested, that this is contrary to what was said.

I accept the explanation of the parliamentary assistant that the circumstances looked different when you arrived in government than before you were in government, but I guess I have some concern with not investigating that before you were in government and making promises which, after you were in government, you decided were not in the best interest of the system to keep. I think there's an obligation on behalf of governments to make commitments that they're willing to keep when they're elected.

So I agree with the principle of the reason for this motion coming forward, because we heard from almost all the deputants that in their opinion leaving vacancy decontrol in this bill was not keeping the McGuinty promise that was made prior to the election, that you were going to put in real rent control that worked. Having said that, I do from time to time commend people for making a mistake and then correcting it. In that case, I suppose I'm not going to support this motion to remove it from the bill, but I do think it's important that we all recognize that it becomes important that politicians make decisions before the election that they can implement after, if they are so fortunate as to be elected.

Mr. Marchese: I just want to say that it doesn't take a lot of courage to break a promise; it really doesn't.

Mr. Duguid, I don't know where you got the idea that Howard Hampton expressed the possibility that he could or would support, under what circumstances—I don't know where you got that. Please, you must do me the favour of finding that reference, because to simply say it like this in front of us and some tenants and those who might be watching is a serious allegation, right? It creates

the impression that somehow he might have said this. So for the record, at some point, obviously not today, you might enlist the support of the thousands of assistants you've got to go and find it right away before the proceedings are over, so you might correct yourself.

You talk about having made huge investments in the rental market. I don't know how you could say that with a straight face. I used to worry that the Tories could do that and not be moved by whatever they said that might not have been altogether truthful, possibly. But for the Liberals to say these things and not have a little flutter when they say them, I don't get it. You guys created so very few affordable units that if you convince yourselves that it's true, it's a problem. The reality is—and these people here know it—you created very few affordable units. As of 2003-04, we used to have the Conservative government publish how many units they built. You guys stopped that in 2004. And the reason you stopped that is because you couldn't bear the criticism of having to publish that so very few affordable units were created. While it is true that there has been the creation of rental units at the high end, you didn't create them. Rental units have come on board, much of it condominium and, yes, high-end rental units, but not affordable units. So how can you say that you made investments in the building of units—although you didn't say “affordable,” I don't think—I don't know.

There's been no investment in affordable housing by your government, the Liberal government—none. Some trickle of housing is being announced, because I'm now getting it. You've got 12 housing units here, 20 units there. It sounds oh, so very nice. I'm getting it for the first time. So you're beginning to see a trickle of some units with the help of the federal government, God bless, but you guys have made no investment whatsoever.

Then you point out that tenants do not support the end of vacancy decontrol. I'm amazed at that. All of the people who have come before you have spoken against. True, they're organizations representing tenants, but your survey that you sent out, as made so painfully obvious by two people who came here, Mr. Robert Levitt—you would know him—and Mr. Dale Ritch—you probably all remember him as well—talks about when you institute vacancy decontrol. There was no option for people to say to you, “Do you think we should get rid of it altogether?” So my assumption is that you're basing the facts around what tenants may or may not have said on the survey you sent out to people, which they may or may not have gotten, may or may not have read, but I can't imagine that where you've had meetings, the tenants or their organizations said to you, “We love you, Liberals. Keep vacancy decontrol because we think it's good for the tenants that we speak for.” I don't know where you get that kind of stuff and how you could say that in a public way with a straight face.

Therefore, I just wanted to make fun of the Liberal government as much as I could today. I will do that in the hour lead that I will have when this bill is introduced for third reading. With all due respect to you, Madam Chair,

I did want to say that for the benefit of those who are here today to listen to this.

The Chair: We'll look forward to that.

Mr. Duguid: In the interests of time, I'm sure we'll have plenty of time in third reading to discuss the thousands of housing units that have been built and will be built under this government's commitment, a commitment that is probably stronger than that of any government we've seen in certainly the last decade for sure, but it probably goes well beyond that.

Interjections.

The Chair: Committee, can I stop the heckling, please? Can I just let one person speak at a time, please? Thank you.

Mr. Duguid, are you finished?

Mr. Duguid: Yes.

The Chair: Thank you. Mr. Hardeman.

Mr. Hardeman: I was just sitting here listening to this great debate, and of course I too have some concerns about the comments made by the parliamentary assistant relating to what they had to do once they got into office because circumstances were not the way they thought they would find them in the marketplace. It would seem to me that his argument that the vacancy rate was much higher than was envisioned when they made the statement that they were going to put in real rent control does not recognize that the present act, the Tenant Protection Act, is the act that helped create that vacancy rate, the rate that went up. So it would seem to me, if you couldn't keep the promise—and I've said this in the House—I don't know why we're dealing with this bill at all. The Tenant Protection Act was working fairly well for the protection of the tenants.

But I really wanted to just comment on process. I have some real concerns. I've heard the member from the New Democratic Party mention a number of times that when he has his hour in the House, he will explain these things to us. I'm very interested in these things that he's going to explain, and from what you read, Madam Chair, prior to us starting this debate on clause-by-clause, it points out quite explicitly that there will not be an hour in the House for the member of the New Democratic Party to speak to this issue.

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Mr. Marchese: On third reading there will be.

Mr. Hardeman: No, on third reading there will be what is left of the day that it's introduced, to be split equally among three parties. If you look at the time frame, it is very seldom—

The Chair: Mr. Hardeman, could I ask you to speak to the motion. That's really what we're here—

Mr. Hardeman: I'm speaking to the motion because I want to hear his comments on the motion.

The Chair: I hear you, but I need you to speak to the motion that we have before us. I need to keep people on task.

Mr. Hardeman: Yes, speaking to the motion, if I can find it here, on the lawful rent for new tenants, section 113; the lawful rent for the first rental period. The New

Democrat introduced this motion, "the lawful rent payable by the previous tenant." It's removing vacancy decontrol, and the member, in explaining why this was being put forward, put forward his case but he left out a number of issues that he said he was going to explain at a later date. I just wanted to make sure that we were all privy to that information because, from what I heard from the Chair, that later date will not arrive and he will not have that time to tell us that. I just wanted to bring that up.

The Chair: Thank you, Mr. Hardeman, I appreciate that.

Mr. Hardeman: The shortness of the time, that is.

The Chair: I believe when we began debate on this motion the member did ask for a recorded vote.

Mr. Marchese: Yes, we did.

The Chair: Thank you. I was trying to recall what we did. Mr. Marchese has asked for a recorded vote.

Ayes

Marchese.

Nays

Duguid, Flynn, Hardeman, Lalonde, MacLeod, Rinaldi, Sergio.

The Chair: That's lost.

Shall section 113 carry? All those in favour? All those opposed? That's carried.

Section 114, a government motion.

Mr. Lalonde: I move that section 114 of the bill be amended by adding the following subsections:

"Order takes effect after tenancy agreement

"(4) If an order made under paragraph 6, 7 or 8 of subsection 30(1) takes effect in respect of a rental unit after a new tenancy agreement relating to the rental unit takes effect, the landlord shall promptly give to the new tenant written notice about the lawful rent for the rental unit in accordance with subsection (5), unless the order was made on the application of the new tenant.

"Contents of notice

"(5) A notice given under subsection (4) shall be in the form approved by the board and shall set out,

"(a) information about the order made under paragraph 6, 7 or 8 of subsection 30(1); and

"(b) such other information as is prescribed."

The Chair: Any comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 114, as amended, carry? All those in favour? All those opposed? That's carried.

Committee, there are no changes to sections 115 through 125. Shall they carry? All those in favour? All those opposed? That's carried.

Landlord application for rent increase: a government motion.

Mr. Sergio: I move that subsection 126(7) of the bill be amended by striking out “Subject to subsection (8)” at the beginning and substituting “Subject to subsections (8) and (8.1).”

The Chair: Any comments or questions?

Mr. Hardeman: Can I have an explanation of what the impact is?

Mr. Duguid: It's just a technical change. It's a subsection numbering issue.

The Chair: Further questions or comments? All those in favour of the motion? All those opposed? That's carried.

Mr. Hardeman, you have the next motion.

Mr. Hardeman: I move that subsection 126(8) of the bill be amended by striking out “did not require replacement” in the portion before clause (a) and substituting “did not require major repair or replacement”.

The Chair: Comments or questions?

Mr. Duguid: After sitting hour upon hour with Mr. Hardeman on a number of different bills this session, I'm really happy to be able to support one of his motions.

The Chair: This is a red-letter day.

Interjection: There goes the shutout.

The Chair: This is a special day.

Any further comments or questions? Seeing none—

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested, under the wire. You just got it.

Ayes

Duguid, Flynn, Hardeman, Lalonde, MacLeod, Rinaldi, Sergio.

The Chair: That's carried.

A government motion, Mr. Flynn.

Mr. Flynn: I move subsection 126(8) of the bill be amended by striking out “resulted in an improvement in” in the portion before clause (a) and substituting “promotes”.

The Chair: Any comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

I believe the next motion is a duplicate so—

Mr. Hardeman: It would be out of order.

The Chair: —you withdraw it. Thank you.

Next, a government motion.

Mr. Rinaldi: I move that section 126 of the bill be amended by adding the following subsection:

“Same

“(8.1) A capital expenditure is not an eligible capital expenditure with respect to a rental unit for the purposes of this section if a new tenant entered into a new tenancy agreement in respect of the rental unit and the new tenancy agreement took effect after the capital expenditure was completed.”

The Chair: Any questions or comments?

Mr. Duguid: Very quickly, I just want to thank the Federation of Metro Tenants' Associations and Dan

McIntyre. This is an idea that they brought forward. It makes sense. It's something that we're happy to support and take this opportunity to thank him for his input into this legislation.

The Chair: Any further comments or questions? All those in favour of the motion? All those opposed? That's carried.

Next, a government motion.

Mr. Lalonde: I wish that one was written in French, it would be a lot easier for me.

Mr. Sergio: Can we dispose of that without reading it?

The Chair: Not yet.

Mr. Lalonde: I move that subsections 126(9), (10) and (11) of the bill be struck out and the following substituted:

“Order

“(10) Subject to subsections (11) to (11.2), in an application under this section, the board shall make findings in accordance with the prescribed rules with respect to all of the grounds of the application and, if it is satisfied that an order permitting the rent charged to be increased by more than the guideline is justified, shall make an order,

“(a) specifying the percentage by which the rent charged may be increased in addition to the guideline; and

“(b) subject to the prescribed rules, specifying a 12-month period during which an increase permitted by clause (a) may take effect.

“Limitation

“(11) If the board is satisfied that an order permitting the rent charged to be increased by more than the guideline is justified and that the percentage increase justified, in whole or in part, by operating costs related to security services and by eligible capital expenditures is more than 3 per cent,

“(a) the percentage specified under clause (10)(a) that is attributable to those costs and expenditures shall not be more than 3 per cent; and

“(b) the order made under subsection (10) shall, in accordance with the prescribed rules, specify a percentage by which the rent charged may be increased in addition to the guideline in each of the 12-month periods following—”

The Chair: Mr. Lalonde, can you read that last line one more time? You missed a word, I'm sorry.

Mr. Lalonde: “—in addition to the guideline in each of the two 12-month periods following the period specified under clause (10)(b), but that percentage in each of those periods shall not be more than 3 per cent.

“Serious breach

“(11.1) Subsection (11.2) applies to a rental unit if the board finds that,

“(a) the landlord,

“(i) has not completed items in work orders for which the compliance period has expired and which are found by the board to be related to a serious breach of a health, safety, housing or maintenance standard,

“(ii) has not completed specified repairs or replacements or other work ordered by the board under paragraph 4 of subsection 30(1) and found by the board to be related to a serious breach of the landlord’s obligation under subsection 20(1) or section 161, or

“(iii) is in serious breach of the landlord’s obligations under subsection 20(1) or section 161; and

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“(b) the rental unit is affected by,

“(i) one or more items referred to in subclause (a)(i) that have not been completed,

“(ii) one or more repairs or replacements or other work referred to in subclause (a)(ii) that has not been completed, or

“(iii) a serious breach referred to in subclause (a)(iii).

“Same

“(11.2) If this subsection applies to a rental unit, the board shall,

“(a) dismiss the application with respect to the rental unit; or

“(b) provide, in any order made under subsection (10), that the rent charged for the rental unit shall not be increased pursuant to the order until the board is satisfied, on a motion made by the landlord within the time period specified by the board, on notice to the tenant of the rental unit, that,

“(i) all items referred to in subclause (11.1)(a)(i) that affect the rental unit have been completed, if a finding was made under that subclause,

“(ii) all repairs, replacements and other work referred to in subclause (11.1)(a)(ii) that affect the rental unit have been completed, if a finding was made under that subclause, and

“(iii) the serious breach referred to in subclause (11.1)(a)(iii) no longer affects the rental unit, if a finding was made under that subclause.”

The Chair: You read that magnificently. I’m at the point in my meeting where I have to inform the committee that we’re at 5 o’clock and I have to reread the time allocation motion: “That the deadline for filing amendments to the bill with the clerk of the committee shall be 12 noon on June 7, 2006. On that day, at not later than 5 p.m. those amendments which have not been” yet “moved shall be deemed to have been moved, and the Chair of the committee shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill and any amendments thereto. The committee shall be authorized to meet beyond the normal hour of adjournment until completion of clause-by-clause consideration. Any division required shall be deferred until all remaining questions have been put and taken in succession with one 20-minute waiting period allowed pursuant to standing order 127(a); and

“That the committee shall report the bill to the House not later than Thursday, June 8, 2006. In the event that the committee fails to report the bill on that day, the bill shall be deemed to be passed by the committee and shall be deemed to be reported to and received by the House.”

We’re at section 126. Shall the motion carry? All those in favour? All those opposed? That’s carried.

Mr. Hardeman: Madam Chair, do you not have to put all the amendments for votes?

The Chair: I am. I’m in the process of doing that.

Mr. Hardeman: Oh, okay. Individually, not as—

The Chair: Yes, I’ll do them all individually. I just passed the one that Mr. Lalonde read. The next section is a PC motion. Shall it carry? All those in favour—

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested. All those in favour? I’m sorry; we’re going to do that at the end. That’s how that would work. So we’ll do that one at the end of this section. Is that right? At the complete end, okay.

The next one—I’m just getting guidance; I haven’t done this before.

The next motion: Shall it carry?

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested. We’ll do that at the end.

The next motion, page 52.

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested.

So those three, we’ll go to later.

Sections 127 through 135 have no changes. Shall they carry? All those in favour? All those opposed? That’s carried.

Section 136: an NDP motion. It’s out of order, Mr. Marchese, just so you know.

Shall 136 carry? All those in favour? All those opposed? That’s carried.

Part VIII, “Smart Meters and Apportionment of Utility Costs,” is a PC motion. All those in favour?

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested.

The next one is a PC motion.

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote.

The next motion, page 56: All those in favour? All those opposed? That’s carried.

Mr. Marchese: Where are you?

The Chair: Sorry. Let me do that again. I was looking down.

This is a PC motion on page 56, in part VIII. All those in favour?

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote.

Next is a PC motion, page 57.

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested.

Page 58, a government motion: All those in favour? All those opposed? That’s carried.

Page 59, a PC motion.

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested. We’ll do that later.

Next is a PC motion. It’s out of order, so we can’t vote on that one.

Page 61, an NDP motion: That one is out of order as well. So that's the end of part VIII, but we'll be coming back to it.

Section 138: a PC motion.

Ms. MacLeod: Recorded vote.

The Chair: A recorded vote has been requested.

Next, page 63.

Ms. MacLeod: Recorded vote.

The Chair: A recorded vote has been requested.

Next, page 64, a government motion: All those in favour? All those opposed? That's carried.

Page 65, a PC motion.

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested.

The next motion is page 66. It's an NDP motion. It's out of order. We'll be dealing with section 138 again.

Part IX, "Care Homes": Sections 139 through 143 have no changes. Shall it carry? All those in favour? All those opposed? That's carried.

Section 144, a government motion, page 67: Shall it carry? All those in favour? All those opposed? That's carried.

Shall section 144, as amended, carry? All those in favour? All those opposed? That's carried.

Sections 145 through 151 have no changes. Shall they carry? All those in favour? All those opposed? That's carried.

Part X, "Mobile Home Parks and Land Lease Communities": Sections 152 through 161 have no changes. Shall they carry? All those in favour? All those opposed? That's carried.

Section 162, a government motion, page 68: All those in favour of the motion? All those opposed? That's carried.

Shall section 162, as amended, carry? All those in favour? All those opposed? That's carried.

Sections 163 through 167 have no changes. Shall they carry? All those in favour? All those opposed? That's carried.

We're at part XI, "The Landlord and Tenant Board": There are no changes in sections 168 through 182. Shall it carry? All those in favour? All those opposed? That's carried.

Part XII, "Board Proceedings": There are no changes in sections 183 through 188. Shall it carry? All those in favour? All those opposed? That's carried.

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Section 189, government motion, page 69: Shall it carry? All those in favour? All those opposed? That's carried.

There's an NDP motion, page 70. Shall it carry? All those in favour? All those opposed? That's lost.

Section 189: Shall it carry, as amended? All those in favour? All those opposed? That's carried.

Section 190: There are no changes. Shall it carry? All those in favour? All those opposed? That's carried.

Section 190.1, PC motion, page 71—

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested.

Sections 191 through 202: There are no changes. Shall it carry? All those in favour? All those opposed? That's carried.

Section 202, Mr. Marchese's motion, page 72: Shall it carry?

Mr. Marchese: I thought it was section 203.

The Chair: Sorry, 203. I'm reading the wrong number.

Mr. Marchese: Recorded vote, Madam Chair.

The Chair: A recorded vote has been requested.

Section 204 is a government motion, page 73. Shall it carry? All those in favour? All those opposed? That's carried.

Section 205.1, a PC motion—

Interjection.

The Chair: Sorry. I have to go back. I jumped ahead.

Section 204, as amended: Shall it carry? All those in favour? All those opposed? That's carried.

Section 205 has no changes. Shall it carry? All those in favour? All those opposed? That's carried.

Section 205.1 is a PC motion.

Ms. MacLeod: Recorded vote.

The Chair: A recorded vote has been requested.

Second motion, page 75—

Mr. Sergio: Madam Chair, can we go back? Section 205.1—

The Chair: Yes.

Mr. Sergio: What was the vote on the one there?

The Chair: It's on page 74. A recorded vote has been requested on the first motion.

Mr. Sergio: Oh, a recorded vote. Okay.

The Chair: On the second motion, which is an NDP motion—

Mr. Marchese: Recorded vote.

The Chair: A recorded vote has been requested on that one.

Section 206 is a government motion, page 76. Shall it carry? All those in favour? All those opposed? That's carried.

Shall section 206, as amended, carry? All those in favour? All those opposed? That's carried.

Sections 207 through 208 have no changes. Shall it carry? All those in favour? All those opposed? That's carried.

Section 209, government motion, page 77: Shall it carry? All those in favour? All those opposed? That's carried.

Shall section 209, as amended, carry? All those in favour? All those opposed? That's carried.

Sections 210 to 214 have no changes. Shall it carry? All those in favour? All those opposed? That's carried.

Part XIII, "Municipal Vital Services Bylaws": Sections 215 through 223 have no changes. Shall it carry? All those in favour? All those opposed? That's carried.

Part XIV, "Maintenance Standards": Sections 224 through 226 have no changes. Shall it carry? All those in favour? All those opposed? That's carried.

Part XV, “Administration and Enforcement”: Sections 227 through 232 have no changes. Shall it carry? All those in favour? All those opposed? That’s carried.

Part XVI, “Offences”: Section 233 has no changes. Shall it carry? All those in favour? All those opposed? That’s carried.

Section 234, government motion, page 78: Shall it carry? All those in favour? All those opposed? That’s carried.

The next motion is page 79, a Conservative motion. Shall it carry?

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested.

Sections 235 through 240 have no changes. Shall it carry? All those in favour? All those opposed? That’s carried.

Part XVII, “Regulations,” PC motion, page 80—

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested.

Page 81, a PC motion—

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested.

Government motion, page 82: All those in favour of that motion? All those opposed? That’s carried.

Part XVIII, “Transition,” government motion, page 83: All those in favour of the motion? All those opposed? That’s carried.

Shall section 242, as amended, carry? All those in favour? All those opposed? That’s carried.

Sections 243 through 246 have no changes. Shall it carry? All those in favour? All those opposed? That’s carried.

Section 246.1, NDP motion, page 84—

Mr. Marchese: Recorded vote.

The Chair: A recorded vote has been requested.

Part XIX, “Other Matters”: Sections 247 through 260 have no changes. Shall it carry? All those in favour? All those opposed? That’s carried.

“Access to Justice Act, 2006 (Bill 14)”: There are no changes to section 261. All those in favour? All those opposed? That’s carried.

Section 262: There’s a government motion, which is out of order. So shall section 262 carry? All those in favour?

Mr. Duguid: I just want to clarify. This is 262?

The Chair: We’re on 262.

All those in favour of the motion? All those opposed? That’s lost.

Section 263, NDP motion, page 86: All those in favour of the motion? All those opposed? That’s lost.

Shall section 263 carry? All those in favour? All those opposed? That’s carried.

Section 264, short title: Shall section 264 carry? All those in favour? All those opposed? That’s carried.

I have to go back now. These are all the recorded votes, committee, if you’re following along.

I believe the first one is part VIII, “Smart Meters and Apportionment of Utility Costs.” Is that right?

Mr. Marchese: What page, again, Madam Chair?

Interjections.

The Chair: We’re at page 50. A recorded vote has been requested.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That’s lost.

Page 51, a PC motion: A recorded vote has been requested.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That motion is lost.

Page 52: A recorded vote has been requested.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That motion is lost.

Shall section 126, as amended, carry? All those in favour? All those opposed? That’s carried.

Now I’m where I was, at part VIII, “Smart Meters and Apportionment of Utility Costs,” on page 54. It’s a PC motion. A recorded vote has been requested.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That motion is lost.

Page 55, a PC motion: a recorded vote.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That motion is lost.
Page 56.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That vote is lost.

Mr. Hardeman: On the previous one, 155, I hope the record shows that it is page 55 and 55b. There are two pages to that same resolution. We went from 55 to 56, but there are two pages for the 55 motion.

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The Chair: Thank you. Page 57, PC motion. A recorded vote has been called for.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That's lost.

The next motion we're voting on is page 59. A recorded vote.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That vote is lost.

Shall section 137, as amended, carry?

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested.

Ayes

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

Nays

Hardeman, MacLeod.

The Chair: That's carried.

Section 138, "Apportionment of utility costs," PC motion, page 62. A recorded vote.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That's lost.
Page 63, PC motion.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That vote is lost.
PC motion, page 65.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That vote is lost.

Shall section 138, as amended, carry? All those in favour?

Mr. Hardeman: Recorded vote.

The Chair: It's too late to ask for a recorded vote. You have to start before I get to the end of it. I've already finished reading it. Please ask a little bit earlier. All those in favour? All those opposed? That's carried.

The next section is 190.1, "File dispute," PC motion, page 71.

Mr. Hardeman: Recorded vote.

The Chair: It is a recorded vote. Do you want it for later on? Okay.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That's lost.

Section 203, an NDP motion. A recorded vote has been requested.

Ayes

Marchese.

Nays

Duguid, Flynn, Hardeman, Lalonde, MacLeod, Rinaldi, Sergio.

The Chair: That's lost.

Now that we've dealt with that section, shall section 203 carry? All those in favour? All those opposed? That's carried.

We're on section 205.1, a PC motion, page 74.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That's lost.

NDP motion, page 75. A recorded vote has been requested.

Ayes

Marchese.

Nays

Duguid, Flynn, Hardeman, Lalonde, MacLeod, Rinaldi, Sergio.

The Chair: That's lost.

Section 234, page 79, there's a PC motion.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That's lost.

Shall section 234, as amended, carry? All those in favour? All those opposed? That's carried.

We're at section 241, "Regulations," PC motion, page 80.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That's lost.

Page 81, PC motion.

Ayes

Hardeman, MacLeod.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That's lost.

Shall section 241, as amended, carry? All those in favour? All those opposed? That's carried.

We're at section 246.1, page 84, NDP motion. A recorded vote has been requested.

Ayes

Hardeman, MacLeod, Marchese.

Nays

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

The Chair: That's lost.

Committee, we've reached that point in the bill that I like: the end. Shall the title of the bill carry? All those in favour?

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested.

Ayes

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

Nays

Hardeman, MacLeod.

The Chair: That's carried.

Shall Bill 109, as amended, carry? All those in favour?

Mr. Hardeman: Recorded vote.

The Chair: A recorded vote has been requested.

Ayes

Duguid, Flynn, Lalonde, Rinaldi, Sergio.

Nays

Hardeman, MacLeod.

The Chair: That's carried.

Shall I report the bill, as amended, to the House? All those in favour? All those opposed? That's carried.

This concludes the committee's consideration of Bill 109. It has been a pleasure. I would like to thank all my colleagues on the committee for their work on the bill. The committee also thanks the committee and ministry staff and the members of the public who made their contribution to this committee's work. This committee now stands adjourned.

The committee adjourned at 1727.

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Official Report of Debates (Hansard)

Thursday 3 August 2006

Journal des débats (Hansard)

Jeudi 3 août 2006

**Standing committee on
general government**

**Planning and Conservation
Land Statute Law
Amendment Act, 2006**

**Comité permanent des
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Thursday 3 August 2006

Jeudi 3 août 2006

The committee met at 1002 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mrs. Linda Jeffrey): Good morning. The standing committee on general government is called to order. We're here today to commence public hearings on Bill 51, the Planning and Conservation Land Statute Law Amendment Act, 2006. The first item of business is the report of the subcommittee on committee business. Could I ask someone to move the subcommittee report and read it into the record?

Mr. Peter Fonseca (Mississauga East): I'll do that, Chair.

The standing committee on general government, summary of decisions made at the subcommittee on committee business.

Your subcommittee on committee business met on Tuesday, July 4, 2006, and recommends the following with respect to Bill 51, An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts.

(1) That, as per the agreement of the party whips, the committee hold up to four days of public hearings in Toronto (Thursday, August 3, 10 a.m. to 6 p.m.), London, Napanee and Sudbury (Tuesday, August 8, Wednesday, August 9 and Thursday, August 10, 2006, 10 a.m. to 5 p.m., depending on travel arrangements); that the order of locations visited is to be determined by the committee clerk in consultation with the Chair, taking into account travel arrangements.

(2) That, as per the agreement of the party whips, the committee hold two days of clause-by-clause consideration on Tuesday, August 29, and Wednesday, August 30, 2006 (10 a.m. to 5 p.m.).

(3) That the committee clerk, with the authority of the Chair, post information regarding the committee's business on the Ontario parliamentary channel, the committee's website and one day in the following area newspapers (dailies when possible; otherwise, weeklies): Toronto (Globe and Mail), London, St. Thomas, Woodstock, Stratford, Brantford, Kitchener-Waterloo, Sudbury, Sturgeon Falls, Espanola, Napanee, Kingston, Belleville, Trenton, Picton and Tweed. The ads are to be posted as soon as possible.

(4) That the interested people who wish to be considered to make an oral presentation on Bill 51 should

contact the committee clerk by 4 p.m., Wednesday, July 26, 2006.

(5) That, if required, on Wednesday, July 26, 2006, the committee clerk supply the subcommittee members with a list of requests to appear received (to be sent electronically).

(6) That, if required, each of the subcommittee members supply the committee clerk with a prioritized list of the names of witnesses they would like to hear from by 4 p.m., Thursday, July 27, 2006, and that these witnesses must be selected from the original list distributed by the committee clerk to the subcommittee members.

(7) That the committee clerk, in consultation with the Chair, be authorized to schedule witnesses from the prioritized lists provided by each of the subcommittee members.

(8) That if all the groups can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties and no party lists will be required.

(9) That groups and individuals be offered 20 minutes in which to make a presentation (15 minutes for the presentation and five minutes for questions from the committee members).

(10) That a minimum of six presenters (two hours) is required to warrant travel to London, Napanee or Sudbury; and that if travel is not warranted to a location, witnesses in that location be offered videoconferencing.

(11) That if London, Napanee or Sudbury have vacancies; and if Toronto-area groups are available to travel; and if there are more Toronto-area groups willing to travel than there are vacancies in London, Napanee or Sudbury, the subcommittee shall select the Toronto-area groups that will be heard in these locations.

(12) That the deadline (for administrative purposes) for filing amendments (as per the agreement of the three party whips) be Wednesday, August 23, 2006, 5 p.m.

(13) That on Tuesday, August 29, 2006, at 10 a.m., the minister be invited to make a 15-minute presentation followed by 10 minutes of questions and answers for each of the opposition parties (20 minutes in total for the two opposition parties).

(14) That in order to facilitate the distribution of written submissions before the beginning of clause-by-clause, the deadline for written submissions be 5 p.m., Monday, August 28, 2006.

(15) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair: Any comments or questions?

Mr. Ernie Hardeman (Oxford): I just wanted to make sure, for the record, we all understood that number 2, where it says "two days of clause-by-clause," is not a commitment from the three parties that we would have the clause-by-clause completed in two days. It just means that we will hold those two days, and if more is required, we will have to set more time beyond that to do that.

The Chair: Any other comments or questions?

Mr. Michael Prue (Beaches—East York): This is only a question. Obviously there weren't enough people to warrant going to London and Sudbury. I received a fax stating that we will be meeting here on Tuesday, August 8, from 10 a.m. until 3:50 p.m.—the last one being the regional municipality of Waterloo. Is that the only day or are we coming a second day as well?

The Clerk of the Committee (Ms. Susan Sourial): We're meeting on the 9th as well. I think the agendas hadn't been finalized for the 9th.

Mr. Prue: But there are enough people for the 9th to justify another day?

The Clerk of the Committee: Yes.

The Chair: Any other comments or questions?

The committee will remember that Minister Gerretsen was offered time on the 29th, and he informed the clerk that he was not available. He offered to attend on August 10, and the subcommittee declined that offer. It turns out we don't have enough people to see on the 10th, so maybe the committee was telepathic in their knowledge that we wouldn't have enough people, just for your information.

Could I have a vote on receiving the report? All those in favour? All those opposed? The report of the subcommittee is carried.

PLANNING AND CONSERVATION

LAND STATUTE LAW

AMENDMENT ACT, 2006

LOI DE 2006 MODIFIANT DES LOIS EN CE QUI A TRAIT À L'AMÉNAGEMENT DU TERRITOIRE ET AUX TERRES PROTÉGÉES

Consideration of Bill 51, An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts / Projet de loi 51, Loi modifiant la Loi sur l'aménagement du territoire et la Loi sur les terres protégées et apportant des modifications connexes à d'autres lois.

The Chair: We're at the public hearing portion of our meeting. I'd like to welcome our witnesses and tell them that they have 20 minutes to make their presentation.

Our first delegation this morning is the Ontario Catholic School Trustees' Association and the Ontario Public School Boards' Association. Could you come forward?

Are Mr. Murray, Mr. Johnson and Mr. Wright here? They're not.

STOP TRANSMISSION LINES OVER PEOPLE

The Chair: We'll move on to our next delegation: Stop Transmission Lines Over People. Is Mr. Johnson here? Please come forward.

Good morning. As you set yourself up, thank you for being here today. Please announce your name and the organization you speak for so that Hansard gets a record of that. You have 20 minutes to speak. If you choose to use all that time, there will be no opportunity for us to ask questions. If you leave time at the end, it will be divided amongst the three parties equally.

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Mr. Richard Johnson: Thank you very much. My name is Richard Johnson. I've been a very active member of a community-based group called STOP. I'm not the official spokesperson for the organization; the official spokesperson is on holidays. I've stepped in to put our experience before this committee in the hopes that it will influence the outcome of Bill 51.

I actually wrote a six-page speech that I was going to read to you this morning, but rather than sit down and plow through it, I decided to leave that speech with the clerk. I'll try to summarize more succinctly my concerns and my experience.

STOP is a grassroots community group that came out of York region. It was created because Hydro One was proposing that a transmission line be built from Markham to Newmarket. That line was approximately 25 kilometres long, and it ran immediately behind residential areas. There was an outpouring of concern from the community. STOP was able to rally the support of approximately 3,000 people, who signed online and hard-copy petitions; 653 bump-up letters were sent to the Minister of the Environment.

We've met with all levels of government in trying to address this issue. In the process, I've become well versed in power infrastructure implementation issues and I've found case studies from across North America mainly, but many here in Ontario, that I think this committee should be and likely is well aware of. For instance, King township is experiencing a case right now with regard to our case. Aurora, Newmarket, Markham, Mississauga, Toronto, a town called Eden, Ontario, Niagara Falls—all of these communities have experienced power infrastructure issues in the past year that had the potential to impact communities.

My concern—the reason I'm here today—is that section 23 of the proposed Bill 51 apparently exempts power infrastructure programs from the Planning Act. Now, I understand that public institutions such as OPG

and Hydro One are already exempt from the Planning Act, and they are in some cases subjected to undertake what's called an environmental assessment, either a class EA or an individual EA depending on the scope of the project. But the reason I am here is that I do not believe there are enough controls or guidelines in place to protect our communities. I believe that municipal input and public input is absolutely essential to smart growth planning.

In our case in York region, Hydro One put forward a solution where they proposed putting 130- to 140-foot poles 50 to 70 feet in behind homes. They contended at many public meetings, where literally, in the end, thousands of people attended these and repeated meetings, that there was no real estate impact posed by these towers despite an OMB ruling that ruled in a similar case that there was a 30% devaluation of a homeowner's property. They argued there was no real estate impact; they argued there was no health impact, that they deferred to Health Canada despite the fact the Canadian Cancer Society raises concerns, Oxford, Yale, U of T, University of Victoria, Trent University—a great number of reputable institutions raise concerns over proximity to transmission lines. They contended that there was no aesthetic impact, if you can believe it, to putting a 140-foot pole 50 feet behind somebody's home.

The reason I'm outlining this case is that the Environmental Assessment Act was not able to resolve the issues of residents. Therefore, any effort to remove public input or municipal input into planning decisions I think is a very risky proposition. If we can't trust a public institution to act in good faith with the existing environmental assessment process, how can we trust anyone?

What ended up happening in our case is that we met with the Ontario Power Authority very early on. Amir Shalaby, the VP of systems planning, met with myself and a couple of other people one week before he actually officially started his job, and our case was his first and highest priority because of the pressing power supply needs. When he did hold open houses, or five working group meetings plus meetings with elected officials, all the municipalities were represented, citizen representatives were available from all the municipalities, and they ended up finding over 40 alternatives to what Hydro One proposed was the only viable solution. There was no silver-bullet solution; however, there were a number of combinations that met our needs. In fact, when it came down to it, at the end of the day the solution that was recommended to the Ontario Energy Board was faster, less expensive and less environmentally impacting, provided it's installed in the proper place.

The reason I'm saying this is because it should draw to your attention that public input and community participation in smart growth planning can actually work. So rather than limit the public's input or influence on the OMB or on the planning decisions that affect their community, I think we should be encouraging and facilitating better lines of communication. It's quite apparent that it was residents who pushed for environmental issues

to be addressed in York region, and without the support of the municipalities, and in particular the town of Markham, which poured hundreds of thousands of dollars into this fight, where we had environmental experts of all sorts—without them, without their support and without the ability or the mechanism to fight Hydro One, these lines would have been slapped into our backyard. They completely disregarded the public input. I don't have time here to outline why I say that, but I think there should be a closer examination of the way our approvals and appeals processes work.

I don't profess to fully understand all the implications of Bill 51. I did try to do some research. I know that the Pembina Institute, a very reputable organization that specializes in power supply issues, shares my concern with regard to the diminishment of public input or municipal input into these types of decisions. I know there are town planners, including from Oakville, and other planners who have raised concerns. I've seen legal opinions posted on the Internet that seem to suggest that the bill will result in a diminishment of public input and municipal control over power supply issues.

I totally support the intent of the bill, which is to increase municipal input. I totally support alternative energy solutions. I totally support local power generation, as suggested by the OPA. But all of it has to be underpinned by sound environmental planning, and with the lack of standards or guidelines that adequately address commonly held concerns, I have concerns that people are going to have infrastructure installed in their backyard that is going to damage their urban or rural environment for the long term. I think it's a very, very critical point to consider when we talk about smart growth planning. There is all sorts of positive legislation coming down the pike regarding protecting our environment, and I think that people and municipalities have to play a larger role.

I'll wrap up now, but part of the problem is that in our approach to planning, particularly with Hydro One, in my experience, what happens is that they look at technical and financial considerations first. They identify the solution based on technical and financial criteria, and at the end of the process they try to apply an environmental assessment process. The environmental considerations are an afterthought.

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The mandates of Hydro One, OPA, the Ontario Energy Board, the Ontario Municipal Board—none of them are required to address environmental concerns up front. They defer to the Minister of the Environment almost as an afterthought, and if it meets with the approval of the Minister of the Environment, then it's fine with us. But what happens is that public institutions and, potentially, private companies come up with solutions that are not consistent with the character of the community that they're imposing these solutions on. In the case of Hydro One, I personally feel that they paid lip service to the EA process. They saw it more as a hurdle to overcome than a helpful process to have dialogue that would result in positive solutions.

I'm sorry to run on here, but in 2004 the state of Connecticut passed legislation by a vote of 144 to 5 to address this very same issue that we've fought regarding transmission lines. They demand that transmission lines are underground and, where possible, behind residential areas, to address health concerns and aesthetic concerns, and as an economic development consideration.

There are all sorts of examples internationally where they have more progressive environmental standards with regard to power supply infrastructure. We should be learning from them, and we should be taking steps to engage the public and engage municipalities in responsible, smart growth planning as it pertains to power supply infrastructure.

The Chair: You've left two and a half minutes for each party to ask a question, beginning with Mr. O'Toole.

Mr. John O'Toole (Durham): Thank you very much for your presentation. In fact, the reason I'm here is that this presentation dealt with Mayor Don Cousens and the Markham issue. I'm quite familiar with this issue, and I commend you for your work.

I currently would ask your views on another issue I'm working on in Uxbridge. It's the installation of a wind turbine of about 4.5 megawatts, with 300-foot towers not far from existing residences as well as farm operations. The residents have met, have written the minister, and are very concerned that under the regulations for energy today, anything in excess of two megawatts—generally one of these large turbines is about one to 1.5 megawatts, so there are probably four or five of them, 300-plus feet in the air, flickering lights etc. But there's no requirement to have any kind of what's called an environmental screen, which is not really a formalized process to the extent of a full EA.

Given your experience and the importance of having sustainable solutions, as you put it, what recourse would you—under section 23, you're absolutely right, it kind of exempts this for energy, and for other infrastructure as well. For the greenbelt, they can build as many highways as they want without any environmental—because it's in the public interest of infrastructure.

Mr. Richard Johnson: If we're serious about protecting our environment and listening to the public, I think that we have to create standards that address commonly held concerns.

Mr. O'Toole: Well, I'm a little concerned—

The Chair: Mr. O'Toole, you don't have a lot of time left. If you want an answer, you're going to have to—

Mr. O'Toole: Yes, I just want to get to that question, but I want to say one more thing. I'm surprised that there hasn't been more public response, perhaps because it's the high point of summer—deliberately—because this has serious implications for municipal governance as well as the individual citizen's right of process. This is going to be passed, exempting—on section 23, with respect to Uxbridge, could you give me a response to—

Mr. Richard Johnson: You should look into a case in Eden, Ontario, that went before the OMB. A young

gentleman went before that board and made an impassioned speech, and it was completely disregarded.

I think the concerns are legitimate; there are solutions, however. One thing I found at the OPA working group meetings last summer is that when you get people in a room who are willing to discuss an issue, there are reasonable solutions to mitigate against the concerns. You may not please everyone all the time, but there are things that can be done to address these concerns.

I believe in appropriately located and designed infrastructure that addresses environmental concerns. Quite frankly, Hydro One pays lip service to it, and I'm concerned that some private companies may as well because they're motivated by other things than the environment. They're motivated by the bottom line and ensuring power reliability—

The Chair: Thank you, Mr. Johnson. Mr. Prue.

Mr. Prue: Again, your key concern, and one of mine as well, in this legislation is section 23. Have you been in touch with other environmental groups? You did mention the Pembina Institute. You were speaking of your own group, STOP. Have you been in touch with other ones? Do you know whether other ones share this concern?

Mr. Richard Johnson: There are a great many environmental groups: the Sierra Club, Greenpeace, the Pembina Institute. There's a community group similar to STOP, the Blue Highlands Citizens Coalition, that was concerned about wind turbines on the Niagara Escarpment. There are a great number of people who are well aware of environmental issues who share my concern.

It's my hope that we take a more serious look at that particular clause. I understand the interest in trying to expedite the implementation of infrastructure; it's very important. We've put ourselves into a crisis; it's a self-inflicted power supply crisis. I understand that they're trying to streamline the approval process, but we should not be forgoing public input to the detriment or the cost of the environment.

I've become what I would consider to be an urban environmentalist. I don't think the urban environment should be treated any differently than the rural environment. We have to seriously address these issues. Germany would never allow what Canada does. There are many, many countries—Sweden, the Netherlands—all sorts of states that have passed laws that address the very same concerns we're facing.

I have seen a huge lack of interest, or apathy. When I met my MPP, Greg Sorbara, he told me that he wasn't my elected representative and that he would exercise his own good judgment. When I pointed out the gaps in the planning process, that Hydro One has a limited mandate to only consider transmission lines and they were making their decision without considering conservation or generation, he basically said he'd seen it all before and he dismissed the concerns of thousands. We had a petition in front of him—at the time it was only 350 people, to be fair. But he completely washed his hands of it and then, shortly after, the people of Vaughan rose up: 1,500 people showed up at a public meeting on short notice

regarding the Calpine 1,000-megawatt plant that was proposed in a residential area and—

The Chair: Thank you, Mr. Johnson. Dr. Qaadri.

Mr. Shafiq Qaadri (Etobicoke North): Mr. Johnson, I ask this question in the spirit of inquiry and not really confrontation. You cited a number of institutions that have, for example, remarked on the incidence, as you said, of cancer: Yale, Oxford, Toronto etc. There are a lot of researchers who are studying potential or implied or some kind of effects, for example, regarding cellphones or any other kind of power generation or transmission. My question to you is, how robust is this information? First of all, it's not accepted by the medical community. Is it an area of research focus, interest? Yes. Is there an interest in terms of the public or outrages; has it reached the level of protest? Possibly, as you've brought to us. So I ask you again, as I say, in the spirit of inquiry, how robust do you say this information is?

Mr. Richard Johnson: It's robust enough that I think we should pay attention to it. Dr. Jacek, the York region medical health officer, met with myself and Dr. Magda Havas of Trent University. We looked at the research and we discussed how Health Canada responded to our concerns. Dr. Jacek, along with, I believe, the medical health officer of Toronto, shares enough concern that I think she felt—actually, I have letters where she did state that the World Health Organization's recommendation of prudent avoidance of risk should be adhered to. For instance, we have transformer boxes, the green boxes, running up and down our street. Kids are sitting on these boxes; they're having lemonade stands on these boxes. The Canadian Cancer Society comes out and they say that kids should not play under transmission lines or near transformer boxes. There's no label to suggest that kids should be staying off these boxes.

We aren't taking the least measures to protect our community based on the science. There's enough research out there, I can assure you. In fact, I shared with a gentleman back here a report that was prepared by the University of Victoria, the environmental law group out there. I would be happy to forward the link to you—Nadine Wu, I believe her name was. She wrote a report on international precedents that addressed the concern surrounding EMF. Canada is lagging, and I think there's enough research to warrant concern.

The Chair: Thank you, Mr. Johnson. We appreciate your being here today and your passion. You're a good representative. Thank you very much.

1030

ONTARIO CATHOLIC SCHOOL
TRUSTEES' ASSOCIATION

ONTARIO PUBLIC SCHOOL BOARDS'
ASSOCIATION

The Chair: Our first delegation wasn't here when we began. Are they here today now, the Ontario Catholic School Trustees' Association? Please come forward.

Welcome. I have three names here on my agenda. If you're all going to speak, okay. If you can get yourself settled. If you could identify yourselves and the organization you speak for, for Hansard, and you'll have 20 minutes. If you leave some time at the end, there will be an opportunity that I will share amongst all three parties to ask questions of your delegation. Welcome. You can start any time you like.

Mr. Bernard Murray: Good morning. I am Bernard Murray, president of the Ontario Catholic School Trustees' Association. With me today is Rick Johnson, who is president of the Ontario Public School Boards' Association. Randy Wright, next to him, is superintendent of planning, Peel District School Board. On his left is Paul Mountford; he's the land use planner at the Peel District School Board.

Together, OCSTA and OPSBA represent all English-language school boards and school authorities in Ontario, which collectively educate 1.8 million elementary and secondary students. Our partner associations from French-language public and Catholic school boards are co-signatories of our brief and supportive of our submission today.

I'll share with you a few of the provisions in Bill 51 that school boards support. The school boards associations are sympathetic to the long-standing complaint of municipalities that the Ontario Municipal Board has not deferred or paid sufficient attention to the decisions of the municipality on appeals from various planning decisions, including official plan amendments, zoning bylaw amendments, site plan conditions and conditions of draft approval. Municipalities have also complained that developers have utilized the timelines for appeals found in the Planning Act to push development proposals to the OMB too quickly for the ordinary municipal process, so that municipal council sometimes has not had before it a clear idea of the development in question. In effect, OMB hearings have, on occasion, become original planning exercises and not truly appeals.

The associations therefore support the measures in Bill 51 that give municipalities more time to consider planning changes and require the OMB to pay more heed to the decisions of municipalities while still respecting the appeal rights of proponents. The associations support particularly the maintenance of the OMB's right to hear appeals de novo, as we requested in our submission on Bill 26.

The associations are also pleased that the government is supporting an enhanced recognition of the status of public bodies, including school boards, in the planning process. We are particularly appreciative of the way in which the Planning Act enhances that status. We support the provisions that enhance the ability of public bodies to participate in an OMB appeal in respect of official plan amendments, zoning bylaws and plans of subdivision.

The associations believe that the effect of these enhanced rights will be to better ensure that municipalities consult actively and on an ongoing basis with public bodies. The experience of school boards across

Ontario is that some municipalities are exemplary in their involvement of school boards in the planning process while others treat school boards as an afterthought.

We are aware that the enhanced appeal rights and the rights to submit evidence given to public bodies in these provisions have been criticized as unfair, since proponents who are not public bodies do not have the same rights. These enhanced powers are very important to school boards, however, and the associations urge that they be retained. This is the only way in which the better coordination of public bodies called for in the provincial policy statement can be effectively carried out. We urge this committee to support the legislation in this respect.

I turn this over to Rick now for the opportunities for improving the Planning Act.

Mr. Rick Johnson: The opening of certain provisions of the Planning Act by Bill 51 affords the government the opportunity to address some long-standing issues of great importance to school boards. Bill 51, for example, would make a number of amendments to section 41 of the Planning Act, which deals with site plan control.

The primary concern of the associations with respect to site plan control is that it gives municipalities an opportunity to extract concessions from the school boards that are not actually permitted under section 41 and for which school boards are not funded.

The concern is particularly critical for the school boards when it comes to the placement of portables. Recent amendments to the Planning Act prior to Bill 51 have increased the degree of municipalities' control over site plan issues, including design. For many boards, getting site plan approval is a running battle with municipalities. They are often required to pay much more for site plan approval than the municipality is legally entitled to extract simply in order to secure building permits to get portables on site in a timely way.

This situation is especially problematic these days when the Ministry of Education's commitment to primary class size improvements and the provision of daycare, both of which the associations support, is creating new logistical and space problems in the short term and obliging school boards to locate portables on school sites. This becomes even more problematic where there is residential growth in the neighbourhood.

It is the position of the school boards that the placement of portables ought not to trigger the need for site plan approval. To accomplish this, the associations recommend that the definition of "development" in subsection 41(1) of the Planning Act be amended to exclude the placement of portables by a school board. If it is determined that the definition of "development" should be left as it is so that portables are not exempt, then the associations recommend that there be a specific exclusion of portables from the proposed 41(4)(d), which would give a municipal council control over "matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings...."

The associations are particularly concerned that, given the current appearance of portables, the use of this section by municipalities would effectively prevent school boards from placing needed portables on school sites. If school boards are obliged to comply with design requirements for portables, then portables will become an uneconomic way to deal with population problems in the schools. This is a matter of general public concern.

Exempt portable classrooms from site plan conditions: The Planning Act contains a number of significant elements concerning site plan control as conditions to site plan approval under subsection 41(7). These onerous conditions can include the widening of highways that abut on the land and the conveyance of land to the municipality for a public transit right of way. These conditions reinforce our argument that the mere placement of portables on a school site should be excluded from the definition of "development" for the purpose of site plan control. The associations recommend that section 41 of the Planning Act be amended so that subsections (7) and (8) do not apply to the placement of portable classrooms by a district school board.

Exempt permanent school buildings from design controls: The associations accept the application of section 41 to permanent school facilities. We are concerned, however, that Bill 51 proposes an addition to section 41 which will give municipalities control over matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings, and their sustainable design. The possible application of this clause not only to portables but also to new schools and to school additions would be problematic for school boards. The art of school design is driven in large measure by program requirements of schools, prescribed by the Ministry of Education, and by financial concerns about delivering schools on budget at a time when the benchmark construction costs in the funding model are not adequate. The municipal imposition of enhanced standards will reduce the ability of school boards to provide schools. The associations are not aware that there have been serious complaints about the design of new schools. We recommend that the construction of new school facilities be included in the list of matters exempt from municipal control over exterior design.

Preserve the right to appeal: The experience of school boards over time has been that municipalities routinely ask for more than they are entitled to get under section 41 in exchange for site plan approval. Since school boards often find themselves on tight timelines, they are forced to accede to municipal requirements that are, in fact, illegal, time-consuming and costly. While an appeal to the Ontario Municipal Board is theoretically possible under subsection 41(12), the delay that such an appeal would bring about often makes this remedy useless for school boards. The associations therefore recommend that a right to appeal and build be added to the Planning Act, with the requirement that the municipality reimburse the school board for the costs of the requirements im-

posed by the municipality that the OMB later determines ought not to have been imposed under section 41. This would give a school board the ability to dispute questionable municipal requirements without holding up the processing of the site plan agreement.

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Rights to approach the OMB: An alternative approach to assist school boards would be an amendment to subsection 41(4.2), which Bill 51 proposes to be added to the Planning Act. Currently, the proposed subsection would allow an owner to seek a direction from the Ontario Municipal Board ahead of time, but only in respect of certain matters. The school board associations recommend that subsection 41(4.2) be amended to expand the range of matters that one could bring to the Ontario Municipal Board for its review ahead of the conclusion of a site plan agreement. This section, as amended, would then read, “(4.2) The owner of land or the municipality may make a motion for directions to have the municipal board determine a dispute about whether a matter is subject to site plan control.” In some cases, a school board or owner might want to approach the OMB for a ruling, as suggested by Bill 51. In other cases, where time is short, it might be preferable to go ahead with the arrangement and try to recover costs later.

Mr. Murray: Time will not permit full discussion of all recommendations in our brief. We have therefore concentrated our presentation today on the key issue for school boards in regard to Bill 51, which is site plan control in respect of the placement of portables. It is essential that school boards be provided relief in this area. Excluding the placement of portables by a school board from site plan control would be the best way to ensure that the needs of the students and the school communities for sufficient classroom space and daycare facilities can be met efficiently and at a reasonable cost.

School board associations are grateful for the opportunity to make these submissions and urge this honourable committee to consider our recommendations carefully and act on them.

The Chair: Thank you. You’ve left about three minutes for each party to ask questions, beginning with Mr. Prue.

Mr. Prue: I’ve heard everything you said. Have you gone to AMO, the Association of Municipalities of Ontario, to float this? Are they in any kind of agreement? Have they been consulted?

Mr. Murray: We’re not aware that—

Mr. Prue: So the municipalities traditionally—and I was a former mayor—use the Planning Act to ensure that the school boards comply with the requirements of the municipality. What you’re saying—I’ve not heard this before from any school officials, that it’s onerous, that it’s time-consuming, that you’re almost held hostage. This is pretty new to me. I’ve never heard this expressed before.

Mr. Murray: Randy, do you have some—

Mr. Randy Wright: In response to that, we are aware—not necessarily in the Peel board, where I work,

but I’m aware that in the York board, for example, approval has not been granted by the municipality for the placement of portables. Prior to that point in time—and there are numerous examples, I’m advised, wherein and whereby the same number of portables on similar sites were allowed, and it was largely the consequence of local opposition to the placement of portables, quite distinct and quite apart from any Planning Act requirements.

In the Peel board’s case, from time to time we’ve been presented with certain requirements that we find onerous. One would be the stripping of exterior cladding from portables at one of our sites to match architectural brick on adjacent homes, which we thought was a little over the top when one considers that the placement of portables is generally temporary in nature. That money, of course, takes away from our capital funding that we would otherwise direct to the classroom.

Mr. Prue: Okay. You’ve given me one example, but is this widespread across Ontario, or was this just one municipal board, one municipal body that has created this? Because to change a whole law, to change the whole thing if it’s one municipality—

Mr. Wright: I would have to say, by our liaison with other municipalities, it’s primarily a matter that confronts boards that rely on portables. The growth boards, of course, are the boards that rely most greatly on portables. That’s not to say that non-growth or flatline boards do not rely on portables. If you know the mechanics of the funding model, it’s basically a cumulative count of enrolment versus capacity, and you get—how shall I put it?—spikes from time to time. So there are impediments, and we are aware that Toronto from time to time has had difficulty with portable placement, with reference to the examples I’ve already provided. So it would be growth boards and other boards; primarily, however, boards featuring large numbers of portables.

Mr. Prue: Do the municipalities have a history—again, I’m not aware of this—of delaying your applications? I know when I was a mayor the applications were dealt with forthwith, because we understood the timelines: The portables were usually put up in the summer and had to be ready for September.

Mr. Wright: On portables?

Mr. Prue: Yes.

The Chair: It has to be a really short answer.

Mr. Wright: Focusing my answer on portables, in Peel’s experience, recently the two major municipalities of Mississauga and Brampton have been working well with us.

Mr. Jean-Marc Lalonde (Glengarry-Prescott-Russell): Thank you very much for taking the time to come and address your concerns to this committee. I agree with my colleague Mr. Prue about having to sit down with AMO, because when I looked at the presentation today I said to myself that there should be some discussion going on with AMO on this issue. Being a former mayor myself, portable is portable. When you referred to having to match the aesthetics of the other buildings in the area, we have to say that portable is

portable; it's like having a portable office during construction.

Did you say that at times portables are placed off school board property? No? Sorry, I misunderstood that.

Having this clause in the site plan agreement, having the portables excluded—I wouldn't go along with this. I have to agree with the issue that is indicated in Bill 51. I think there should be a uniform ruling on what is a portable in Bill 51.

What would you say the municipalities should have to have better control of the site plan agreement for portables? Sometimes portables are good for a year; they could be good for 10 years. When you look at the community itself, sometimes they're not too much in favour of having portables; it doesn't look too good. But it's up to the municipality to decide, really, what the site plan should require for those portables.

What would be your position at the present time? What do you think we should have in Bill 51 that would protect the school boards from going over expense?

Mr. Wright: Through you, Madam Chair, I think there may be a compromise in perhaps the boards in advance negotiating or applying to the municipality on a general area where portables would be located. We've tried that, and it seems to be working quite well in our jurisdiction and does not seem to be evident in other jurisdictions. In other words, there would be a general area on the school site that the municipality would agree on in advance as a proper location for the placement of the portables, and understandably, they would be removed in time.

Mr. Hardeman: Thank you very much for your presentation. I would agree with you that we shouldn't introduce legislation that's going to make it more difficult to provide the accommodations to educate our children. Having said that, I have a little problem with the portable issue, because in my community the portables were put there the year after the new school was built. A whole generation of children have gone through, though, and they have not been moved. So they become the standard building. The people who live in that community have some kind of a right—not the municipal council but the people in that community—I think, to have input into what happens and how their community is developed. Whether we call it “portable” or not is, to me, somewhat irrelevant.

The one thing that really tweaked my interest, I suppose, in your presentation is the area where municipalities are demanding more than is legitimate—as you pointed out, the exterior of the portables matching the houses next door. In your opinion, is there any reason to assume that they would not also be doing that with private sector development, to demand more in the site plan than they should have a right to? If so, is it more important to change the legislation so that's not possible than it is to just exempt a certain sector of the development industry?

1050

Mr. Rick Johnson: If I could, just on your first point about portables becoming permanents, part of the issue is that when you've got increased population growth, especially in your growth boards in the GTA, you're putting in something that is supposed to be temporary. When planning increases—there is more residential growth—then what happens is we deal with the issues of the funding formula. We're still waiting for the official capital plan to come out under the funding formula which would allow them to convert 15 or 16 portables on a site into a permanent structure. That is part of the issue of the funding formula that we're trying to deal with, of being able to move that. A number of boards, because of declining enrolment, have reduced their portables, so now we've got a lot of the rural boards in decline and our GTA boards in growth.

I'll let Randy talk about specific issues surrounding the onerous municipalities.

Mr. Wright: We certainly can provide you today with some colourful examples of where we believe there have been some onerous requirements in our case. Again, I'll speak on behalf of the Peel board and our experience. In one case, the board was required, as a condition of site plan approval, to construct a gate that would signify a gated community, a high-income gated community adjacent to the school. I would also draw to your attention that the gate was not to be built on board property but on city property. On other occasions, we've been required to construct off-site sidewalks and, furthermore, give a commitment to maintain them, as well as off-site traffic signals—all things we believe ought to have been captured in development charges, collected, administered and then applied to such infrastructure.

We've been asked for what we believe are over-the-top traffic safety improvements that would be applied to sites that are small. These are sites that were constructed before traffic safety was a major issue. The consequence of that is a significant reduction of play space and a very expensive improvement in our region called kiss-and-ride. The average cost of a kiss-and-ride at a new school is 250; we're well over 400, applying this same type of improvement to our older sites. The expense is—

The Chair: Thank you, Mr. Wright. I'm sorry. The question might have been a little too long, but thank you very much. We appreciate you being here today.

CITY OF BRAMPTON

The Chair: Our next delegation is the city of Brampton. Welcome, Councillor. It's nice to see the city of Brampton here. I have to say—

Ms. Sandra Hames: It's nice to be across the table from you again.

The Chair: —some delegations are more warmly received than others, this being my community. Welcome. As you settle yourself, you will have 20 minutes. If you could introduce yourself, anybody else who will be speaking today and the organization you

speaking for so that Hansard has a record of that. You will have 20 minutes after you've introduced yourself. If you leave time at the end, there will be an opportunity for all three parties to ask you questions.

Ms. Hames: Thank you, Madam Chair, and ladies and gentlemen of the standing committee on general government. My name is Sandra Hames and I'm a councillor with the city of Brampton. I have with me today Kathy Ash from the Brampton planning department, and Ted Yao from legal services.

I want to thank you on behalf of Mayor Susan Fennell and council. Mayor Fennell couldn't be here today. She's at an important regional meeting where it requires all of Brampton's attendance.

We thank you for the opportunity to speak to Bill 51. My purpose today is to inform you of the position that Brampton council has taken on Bill 51. On February 13, 2006, council considered a staff report on Bill 51 and passed a resolution to support the overall objectives of the bill and to provide suggestions for amendments to enhance the effectiveness of the legislation. This deputation will provide a brief overview of Brampton's support and recommendations for Bill 51. The council resolution and staff report that I refer to will be included in our formal submission to the standing committee for your review at the conclusion of these hearings.

Brampton is very supportive of Bill 51 and provincial planning reforms. Let me tell you why.

Brampton is the 10th-largest city in Canada and the second-largest city in the greater Toronto area. Brampton is Canada's number one city for residential growth. We have a current population of 433,000, and it is expected to almost double by 2031.

We've had a lot of experience in managing growth and we are committed to good planning principles. Brampton was one of the first communities in Canada to implement a growth management program that supports sustainable development. Brampton has incorporated an annual development cap to apply additional controls before approving new subdivisions and a more timely delivery of public infrastructure. We have provided our planning expertise to the Strong Communities Act, the Greenbelt Act, the Places to Grow Act and, most recently, the growth plan for the greater Golden Horseshoe.

The Places to Grow Act identifies Brampton as an urban growth centre to manage its own growth, while being consistent with provincial planning policies. Brampton has employed good planning principles from our official plan to plans of subdivision for the benefit of our citizens. We have taken a proactive approach for a clean, green, safe, healthy and attractive community. I have provided you with a copy of our annual report that has more information on Brampton's environmental initiatives.

First of all, I would like to congratulate the province for the proposed planning reforms, and in particular the Minister of Municipal Affairs and Housing for introducing Bill 51. The province has stated that it will give municipalities the tools to be empowered, and Bill 51

does that. As you can see from our rapid growth and depth of planning experience, Brampton welcomes provincial planning reforms that empower municipalities.

Bill 51 empowers municipal councils to make planning decisions. As municipalities, we know local planning the best. It's important that those planning reforms provide clearer rules for the Ontario Municipal Board that support local decision-making and protect the broad public interest.

The city of Brampton council supports Bill 51. The bill restructures the role of the OMB to hear appeals from the decisions of council, rather than the OMB making judgments anew in de novo hearings. Municipal councils will be given the opportunity and responsibility to make planning decisions that should not be easily overturned at the OMB.

Bill 51 requires a complete application, encouraging informed planning and decision-making at the local level rather than through the OMB appeal process. In Brampton, we were unfortunate enough to have one of the most blatant examples of abuse of the existing system. The developer refused to include in the zoning application all the lands needed to install a private sewer system, preferring to rely on amendment powers of the board. This makes the public consultation process before council meaningless. Included in your package is an amendment that addresses what should happen if the board is faced with a very old appeal and there is new information that is relevant because the province or municipality has moved ahead.

Bill 51 allows councils to enforce minimum and maximum building heights and densities, which again reinforces local decision-making. Inclusion of exterior design and character as matters for consideration for site plans is an important provision in terms of urban design. Brampton is at the forefront of the trend towards urban design, with significant policies and advanced practices promoting urban design quality. The provisions will allow such design matters to be defensible at the OMB.

The promotion of sustainable, transit-supportive and pedestrian-oriented development is commendable. Brampton believes there is a link between sustainable and pedestrian-oriented development and community design. Brampton is currently undertaking a study on sustainable development guidelines and has undertaken a comprehensive transit and transportation master plan. Brampton's leadership in sustainable development has been recognized by the province by awarding Brampton's rapid transit proposal AcceleRide \$95 million, and by various industry awards for our environmental best practices.

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Brampton supports the enabling legislation to permit conditional zoning. This tool offers great potential for intensification and infill for Brampton's downtown and central area, while ensuring technical issues are thoroughly addressed.

Brampton fully supports Bill 51, and we ask for your consideration of the following recommendation to

enhance its effectiveness before it proceeds to royal assent: that municipalities be consulted on the establishment of appeal bodies, regulations at the draft stage and the process for open houses, which we actually do hold today. Municipalities can be helpful to the province in establishing these regulations before they come into place.

Brampton recommends that a grant program be established to assist municipalities with the additional costs for the mandatory five-year official plan review, the conformity with provincial plans and the updating of zoning bylaws. We question the practicality of these time frames, given that official plans are subject to multiple appeals to the OMB.

We request clarification on the third party participation that must make oral or written submissions prior to council approval. Our concern is that the public could be shut out of the process if an application is appealed to the OMB.

We need clarification on the municipal requirement for energy conservation and supply. Brampton wants municipal control for zoning and site plan approval and to comment on the regulation for such projects, since energy projects eligible for exemption from the Planning Act will be determined by regulation. Brampton urges the province to continue to provide municipalities with the authority to exercise zoning and site plan control over energy projects.

Finally, we encourage the province to continue with enabling legislation toward design. This should include references and definitions for tertiary plans, block plans, urban design guidelines, massing, articulation, architectural detail and design briefs as well as choices in performing design review. The Planning Act should enable municipalities to establish special character areas where higher-level design control is exercised, similar to that which is permitted through the heritage act, part V.

We thank you for your attention and we would be happy to answer any questions you may have.

The Chair: Thank you, Councillor. We have about three and a half minutes for each delegation to ask a question. This turn, I believe it's Mr. Fonseca.

Mr. Fonseca: I'd like to thank the city of Brampton for its fine presentation. Also coming from a high-growth area, the city of Mississauga, and looking at the official plan and zoning, I know that this has been somewhat contentious. I asked the mayor and councillors about zoning in Mississauga, and it actually had not been touched in some areas since the 1950s, where you may have had a cow pasture or an apple orchard out there and today you have a sprawling metropolis.

In talking about having municipalities update their official plans every five years, would you not feel, in terms of that up-front cost and holding to standards every five years, that that would also reduce the number of appeals that would go forward to the OMB by having that in place?

Ms. Kathy Ash: We just feel that the five-year constant review could be expensive and limit our

resources. We already have many appeals on official plan amendments and zoning amendments that are dealt with effectively in that process. So in terms of the mandatory five years, it's—

Mr. Fonseca: What I was getting to was, with those up-front costs where the official plan is reviewed and updated every five years, would that not bring a reduction in the number of appeals that would go to the OMB because you would have that in place, that official plan and zoning? Could you see that happening?

Ms. Hames: But we actually do review our official plans every five years; it's just not that mandatory process. We do that today; we do review those plans every five years. The mandatory process just makes it a more onerous time frame. We may do it a little later, perhaps a little earlier. Doing every component of that mandatory five-year review we see as being—

Mr. Fonseca: Do you have a suggestion in terms of what you would like to see?

Ms. Hames: Today, we do those reviews on a five-year basis. Maybe that it not be the whole official plan and all of the zoning areas within that one time frame, that they are all looked at within that. We feel that what we are doing today is sufficient. We're still going to get those appealed to the board, and maybe Ted could put it a bit more—

Mr. Ted Yao: Yes. I could perhaps assure the member that we're pleased that your other reforms of the appeal process will—despite the fact that there may be more appeals, they will be dealt with more efficiently, and that may discourage folks from bringing appeals, when you have a better process that's downstream from the filing of the letter of appeal.

Mr. Fonseca: That's where I saw the savings—

The Chair: Thank you, Mr. Fonseca. Ms. MacLeod.

Ms. Lisa MacLeod (Nepean–Carleton): I'd like to thank you, Councillor Hames, and your counterparts for providing us with a great précis of your thoughts; certainly a well-documented package that you sent to us today.

Like you, I represent a very high-growth area, in Nepean–Carleton in the city of Ottawa. It's the fastest growing community, I think, in all of Canada. I have five city councillors. I met with three of them last Friday, and their concern—you mentioned on page 8 about the establishment of local appeal bodies, provision for an optional local appeal body that if established by a municipality would hear appeals of decisions on minor variances and consents. My city councillors are a little bit concerned about councils gone wild. I notice in your recommendation that the municipalities be consulted because the devil really is going to be in the regulations. I want to know, do you think that these bodies are necessary, and if so, could you give us some of your recommendations on how these local appeal boards would work?

Ms. Hames: A wish list.

Ms. MacLeod: A wish list, yes.

Ms. Hames: That's a difficult question for me to answer.

Ms. Ash: Perhaps I could jump in. In Brampton, we have a number of appeals on committee-of-adjustment applications. It could be about 40 a year. A lot of those are dealing with resident concerns: widening of driveways, establishment of doors into side yards. Those aren't necessarily matters of provincial interest, so it would probably be better taken to a local appeal body than as a matter before the Ontario Municipal Board. So that's one area where it would be very good.

Ms. MacLeod: In terms of appointments to these local appeal bodies—this is what was of big concern to city councillors in Nepean—Carleton—I'm just wondering what you would propose. Would it be a provincial appointment or would it be a municipal appointment?

Ms. Hames: If you asked me, I would just like to know that the people appointed to those boards have knowledge of my community, not that somebody from another community who really doesn't know it that well listening to an appeal from people who do know the municipality.

Ms. MacLeod: The one concern that came up in my community with Councillor Gord Hunter, who has been on our planning committee for about 25 years in the city of Ottawa, the former city of Nepean and the regional municipality of Ottawa-Carleton, was that these sort of part-time local appeal boards might not have the necessary background in planning matters and might not be as informed as perhaps people appointed to the OMB. How would you allay, for example, someone like Gord Hunter's concerns?

Ms. Hames: By appointing people who do have that knowledge. You go through an interview process to find out the background of people, the knowledge they have, similar to what you do at the province today, making sure that they fit whatever board you would put them on; and then, I assume, some training in certain things. I know for our committee of adjustment, we run sort of an orientation program so that they know what kind of things are going to come before them.

Ms. MacLeod: Okay. Thank you very much.

The Chair: Mr. Prue.

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Mr. Prue: Two questions. The first one relates to energy projects; you've only got one sentence, but we think this is probably the most contentious issue. You have written, "Brampton urges the province to continue to provide municipalities with the authority to exercise zoning and site plan control over energy projects." What do you see happening if the province continues and doesn't give you that authority?

Ms. Hames: I think we would probably see at some stage a project that is going somewhere that we as a municipality wouldn't want it to go.

Mr. Prue: We have examples in my community, and I know, if not in yours at least in Mississauga, of big gas-fired turbines being put up against considerable community opposition, over which you have little or no

control. Would you see those proliferating? A nuclear plant being built in Brampton?

Ms. Hames: We have that issue right now that we're dealing with the federal government on, one particular company trying to expand in a very residential area. No, we wouldn't like to see that kind of issue. We really do believe that the public need to be involved in some of these issues. We have just approved a plant for Sithe Energy, for Sithe to do—

Ms. Ash: They're connecting up with the Trans-Canada gas pipeline.

Ms. Hames: It's a huge project. It's going into Brampton with the full knowledge of everyone. It went through the planning process, and it's going to be in an area appropriate for it to be in.

Mr. Prue: I understand. You've been quite laudatory around this whole process, but you would not like to see that particular section remain extant. Have I got that right?

Ms. Hames: No, we'd like to have control over where they go.

Mr. Prue: The second aspect—I find it troubling, too—is that you request "clarification on the third party participation that must make oral or written submissions prior to council approval." Oftentimes, citizens will not understand or appreciate what actions are being taken until council finally makes a decision, and then all hell breaks loose. The current proposal would limit the public from being involved because they had not been there at the initial stage, and you would want them to be involved.

Ms. Hames: Yes, that's right.

Mr. Prue: How would you suggest that the law be changed: to exempt the public from having to have made a presentation at the beginning but not the proponents? Is that what you would do?

Ms. Hames: I think we were looking for clarification on that third party participation, if in fact it did allow resident participation after that level. That's what we would like to see, that we don't shut the public out of that process because they don't know or haven't been at that council meeting and had their voice heard. That's why we were asking for clarification on it, if in fact it still does allow for public participation.

Mr. Yao: If I could just add to what Councillor Hames said, when you look at the OMB's record of dismissing appeals on the basis of its power to do so because you did not speak, they're inevitably dismissing appeals which are in support of owners, owners dismissing residents' appeals. To a certain extent, I think you've touched on a very important issue. What we have to do is look at perhaps changing the culture of the Ontario Municipal Board into being somewhat less oriented toward the large landowner, expert-driven kind of solutions, which I think this bill does.

The Chair: Thank you very much. We appreciate your being here today.

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Chair: Our next delegation is the Association of Municipalities of Ontario, Mr. Anderson. Welcome. We're glad you're here today. We're staying right on schedule, and we appreciate your being here today. Could you introduce yourself, the individual with you and the association that you speak for for Hansard? When you begin, you'll have 20 minutes. If you leave time, there will be an opportunity for all the parties to ask questions about your presentation.

Mr. Roger Anderson: Thank you very much, Madam Chair. My name is Roger Anderson. I'm the chairman of the region of Durham, and I'm also president of the Association of Municipalities of Ontario, which I'm representing here today.

Beside me is a young woman who works for the association in our policy division, Milena—and I'll let her say her last name, because she will hit me if I say it wrong.

Ms. Milena Avramovic: Avramovic.

Mr. Anderson: Madam Chair, AMO is, I believe, well known to the committee members. AMO's member municipal governments govern and provide key services to approximately 10 million Ontarians. While each of Ontario's municipal governments is unique, the interests we share in common are greater than the differences that separate us all.

I am pleased to be here to discuss Bill 51. AMO has been very involved in the evolution of the land use planning policy and the improvements to the implementation and administrative functions of the Planning Act. I would like to, by and large, applaud the government's approach to the important issues contained in Bill 51 as well.

AMO supports the concepts of redevelopment, infill and intensification in Ontario communities. The changes proposed in Bill 51 will assist us in achieving those goals. They provide additional tools for implementation of the provincial policies and support sustainable development, intensification and brownfield redevelopment.

AMO is also supportive of the proposed legislative change that would allow municipal councils to refuse individual proposals to convert employment lands into other uses. The appropriate time to consider such action should only be at the time of a five-year comprehensive official plan review, which the proposed act now explicitly defines. If municipalities are to achieve sustainable communities and a live-work relationship for their residents, the provision in the bill in respect to the protection of employment lands is absolutely essential.

We have identified a couple of minor areas, though, that we feel need clarification. The first is in respect to the big box retailers and whether or not they would be allowed in the employment lands. From the municipal perspective, we propose that these types of land use be limited to locations designated for retail uses.

The second area is in respect to broadening the definition of employment uses in subsection 1(5) to include infrastructure such as energy from waste and composting facilities, as these uses are more akin to the traditional understanding of employment lands.

Finally, while the definition works well for the urban communities, I want you to be aware that employment lands for rural and northern communities are often different in character, as many employment centres are resorts, recreational and associated uses. The definition of employment lands should reflect this diversity across this province.

Municipalities are very encouraged by the provisions of Bill 51 that modify the role and scope of the Ontario Municipal Board as well. Requiring the OMB to "have regard to" municipal council decisions is a progressive step in shifting decision-making responsibility from the OMB back to municipal councils. Municipalities are ready to work within this framework while hopeful that future reforms will see the board evolve into an appellate body.

We recommend, though, two minor modifications for clarity in the terms and process.

Firstly, to provide for consistent application of terms, we recommend that subsections 17(44.4) and 17(44.5) be amended to replace the term "consider" with the phrase "have regard to." This refers to a council's recommendation in those situations where the council was given the opportunity to reconsider its decision in light of new information or material. This change should prevent ongoing debate as to the subtle differences of these terms.

Secondly, subsection 17(44.4) should further be amended to provide that appeals be sent back to municipal councils in situations where revised and new provincial policies come into effect after a council's decision but prior to a hearing.

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What is most positive and appreciated by our members is the ability to define and require a complete application. Having a complete set of facts in support of a development proposal at the beginning of the process permits proper municipal review of an application. It allows meaningful public involvement in the municipal process, and it helps the municipal council to make appropriate and timely decisions.

Promoting pre-consultation between municipalities and the developers is already a best practice in many municipalities across this province and something AMO totally supports. Having said this, we understand there is some concern with the proposed bill in regard to notice for the acceptance of a complete application. We agree that the proposed bill needs to be amended to provide for municipal confirmation of a complete and/or incomplete application within a very specified time period. This provision should be limited to applications in respect to official plans, zoning bylaws and subdivisions.

AMO is also supportive of the proposal to narrow the scope of appeals and to modify the board's role with

respect to who may appeal a council decision, restrictions on adding parties to a hearing, restricting the OMB decision-making to those matters dealt with in the decision of council to which the notice of appeal relates, and allowing the opportunity to set up local appeal bodies for disputed minor variances and land severances.

We are supportive of limiting the evidence presented at the Ontario Municipal Board hearings to what is provided to the municipal council. Having said this, AMO does not want municipal councils to be inundated with overly detailed presentations or to be forced into stenographed minutes at the statutory public meeting.

To reach a balance between having all of the pertinent information for informed decision-making and providing an opportunity to introduce important new information which is discovered after the decision is made, a mechanism is required in this act. AMO would be agreeable to a provision in the act that speaks to the introduction of limited new information to the Ontario Municipal Board, provided that the information is not a material change that should have been presented to the council prior to it making its decision.

Following through from the previous statement on new information at the board, the act does not provide for the OMB to dismiss an application on the grounds that the application has substantially changed either. The act needs to be amended to allow the Ontario Municipal Board on its own motion or a motion by a municipality to dismiss an application. This change would ensure that a substantially revised proposal would not be dealt with by the Ontario Municipal Board without municipal review.

Sections 17 and 34 of the proposed bill add a new mandatory requirement for an open house meeting. Holding an open house has been the practice of major applications in municipalities across this province and will continue as an important part of consultation for major changes. Discretion should be provided, however, to councils such that where a matter is minor, an abbreviated process could occur. Mandating open house meetings in all instances will perhaps impact these minor applications, both in terms of timeliness and municipal resources.

The provisions for open house meetings should therefore be limited to new official plans and official plan updates, comprehensive bylaws and the three-year updates, as well as major amendments to any plan.

The provision related to updating official plans in section 26 speaks to revising the official plan not less frequently than every five years. This, ladies and gentlemen, represents an onerous challenge for many municipalities in this province, especially those attempting to achieve conformity with complex provincial legislation like the Oak Ridges moraine, the greenbelt or, most recently, the growth plan.

The proposed subsection 26(1) needs to make it clear that municipalities undertaking a provincial plan conformity initiative or a comprehensive planning review are not required to separately undertake a five-year review of their official plan. This should then be taken the further

step of ensuring that zoning bylaws will be updated three years following the approval of the conformity exercise.

Finally, subsection 3(6) on provincial policy plans needs to make clear that councils are not restricted from making comments that are critical of the results obtained from applying the provincial statement or provincial plans. So AMO requests the following addition to subsection 3(6):

“(c) Nothing in this provision will restrict councils from making comments critical of results obtained by applying the provincial policy statements or provincial plans.”

To summarize, AMO supports the concept of re-development, infill and intensification in Ontario communities. The changes proposed in Bill 51 will assist in achieving those goals, and AMO is encouraged by the provisions of the bill to modify the role and the scope of the Ontario Municipal Board.

Municipalities are ready to work within this new framework. We also expect the province will ensure that other activities, including source water protection, infrastructure planning and financing, complement Bill 51 in its intent of recognizing the important decision-making roles of municipalities.

Ladies and gentlemen, I want to thank you for the opportunity of addressing you here today.

The Chair: Mr. Anderson, you've left about three minutes for each party to ask questions, beginning with Mr. O'Toole.

Mr. O'Toole: Thank you very much—I don't know whether it's regional chair or president of AMO, but I do appreciate your input.

When they had the debate—and our critic, Ernie Hardeman, is quite familiar, having served in many of the same roles as you—it became clear to me there are a couple of things: the uploading of authority and downloading of responsibility. That was the general assumption after the debate, listening to Minister Gerretsen and others, that they were taking up all of the authority and giving you the job to implement many of the policies with respect to the debate around “having regard to” and “consistent with.”

I'm going to ask you a very general question and maybe a timeless question, because it has been debated since the Sewell commission and is still being debated, in my view, today. It seems to me there is no respect for the work done by local and regional authorities in planning, the municipal planning with respect to the employment area, for example, in Durham—it's very important—and the local input would like to be consistent with provincial policy on the environment and other things. Which would you prefer, the “consistent with”—you'll do what Gerretsen says—or the “regard to”? With all of the public processes you've just talked about and listening and trying to make the right decision, do you think there should be some respect or flexibility given to the municipalities, certainly at the upper-tier level, with ministerial oversight? There's enough oversight here to overrule anything you do anyway, so would you like to see some

respect for all of the work that's done at the local and regional levels?

Mr. Anderson: Wearing both hats, municipalities and upper-tier governments have the authority for planning, and they should continue to hold that authority. If the province wants to put in place policies and provincial rules, we should be able to incorporate them around the vision that we, as municipal councils and the planning authority, feel are appropriate.

In regard to "conform with" and "have regard to," AMO's position—and I believe most municipalities' position—was quite clear: We believe that "have regard for" was the appropriate wording.

Mr. O'Toole: I appreciate that. That's very important. It does speak to the limited time I had on council working alongside you and other people, including members here at the table on all sides; Mr. Prue, for example, as the mayor of East York in his former life. It is just a respect thing.

Specifically, there are two issues in Durham. One is the employment area, and you want to respond in a general sense—what's allowed under the Places to Grow plan and the official plan. But also, something that I think AMO may want to look at is the emerging discussion around energy and sustainability in the energy supply mix. In Uxbridge, for instance, there is a wind farm proposal there and—

The Chair: Mr. O'Toole, you have 30 seconds left, just so you know.

Mr. O'Toole: Are you familiar with that proposal for the Uxbridge wind farm, and what process would you like to see and the role of either local or regional level of government?

Mr. Anderson: Mr. O'Toole, in all fairness, I would love to come and address this committee on all of those questions, I really would, but I'd like to come here as chairman of the region of Durham to do that.

In regard to your energy question, we're silent on that within this document and in regard to Bill 51, and—

Mr. O'Toole: But they're exempt under section 23, you see.

Mr. Anderson: I really wanted just to deal with Bill 51, but I'd be happy to be invited back and deal with all those other issues.

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The Chair: Thank you, Mr. Prue.

Mr. Prue: I'm going to come back to that last point again, but first of all I'd like to get a—

Mr. Anderson: Inviting me back?

Mr. Prue: Of course.

The Chair: No leading the witness.

Mr. Prue: Of course.

First, I'd just like to question your statement on big box retailers and that you want them to only be allowed on employment lands. There are many municipalities where it seems that the time of industrial application on some of the lands has passed. I'm speaking of my own municipality of East York, where the factories seemed to be moving away and big box retailers were a natural fit. I

can see that happening in Scarborough today. You don't want to allow that to happen, from what I see, and I'm questioning why, since it seems, at least in the Toronto area, to be quite acceptable.

Mr. Anderson: I'm going to assume that in the city of Toronto—and I really don't assume much when it comes to the city of Toronto. For you to do that, you would have had to go through an official plan amendment and redesignate the lands to accommodate that. We're saying that in our official plans in this province, we have designated lands that can accommodate big box users. We don't want them to take up zoned industrial land. If they did, they would have to go through a complete official plan process to redesignate it. We all want employment and jobs. We think that big box users should be designated to the lands where those types of uses are allowed. Most municipalities have those lands.

Mr. Prue: A second thing: Right underneath that, you write, "The second area is in respect to broadening the definition of employment uses" in subsection 1(5) "to include infrastructure such as energy from waste and composting facilities." The reason I'm asking this question is because the municipalities have been exempted from anything related to energy. It seems that if you want this to be included, you must see a municipal role in looking at energy, whether it be energy from waste, a nuclear facility, a wind farm, whatever. Do you not see—and you've been silent on this—a municipal role in the planning for energy? You've included this, skirted around it even, but—

The Chair: It has to be a really short answer.

Mr. Anderson: Yes, we do see a role.

The Chair: Thank you very much. I love brevity. Mr. Brownell.

Mr. Jim Brownell (Stormont-Dundas-Charlottenburgh): I would like to thank you for your presentation here this morning. Being an MPP from eastern Ontario, I'd like to get a jump on welcoming you and your delegates to the convention that's coming up in Ottawa.

Mr. Anderson: We hope to see you all there.

Mr. Brownell: That's my wish too.

Mr. Anderson: We're willing to sell you all three-day passes.

Mr. Brownell: Very good.

You commented on the new mandatory requirements in sections 17 and 34 for open houses and you indicated there that there should be a limitation on these open houses to new official plans, official plan updates, comprehensive bylaws and the three-year updates as well as major amendments. With regard to other amendments and other requirements in municipalities where there could be the need for an open house, do you have any other suggestions or ideas for alternatives to ensure that there is public engagement—because I think this is a public engagement process. Do you have any ideas that would help us for these public engagements?

Mr. Anderson: Most municipalities—and I'm going to let Milena supplement my answer—in this province that I'm aware of and that I've visited and I've followed

all have a public process, whether it be through a planning committee or a council. Nobody that I know of is not allowed to address council, other than maybe in the city of Toronto, where they don't accept delegations very often. But there are planning committees and there is complete access to councils. So on minor issues, our suggestion is to leave it up to us to decide whether we should have a whole public process, i.e. a delegation-type process.

Milena, did you want to supplement that?

Ms. Avramovic: In the act, there is the public meeting for every kind of application. This is an additional provision for public engagement, and it wouldn't necessarily be before council. It would be just to provide information. It would be for major applications. For those, most municipalities already have open houses. They're the ones that created the concept. We are just saying that for the minor applications, first of all, you're going to slow them down if you have an open house.

Secondly, it's quite a costly endeavour to have an open house on everything, even for a little technical change. There is a public process; it's in the act. This is an additional public process. The way the act reads now, it's a two-pronged public process. We're just saying, for the open houses, just limit them to the larger and more substantive applications; for everything else, you go through the normal public process.

The Chair: In the 13 seconds remaining, Mr. Sergio.

Mr. Mario Sergio (York West): I believe that Mr. Anderson's term will be up as president of AMO. Am I correct?

Mr. Anderson: You're stuck with me for another 10 or 12 days, but yes.

Mr. Sergio: On behalf of the committee and the ministry as well, I would like to thank Mr. Anderson for his untiring work on behalf of AMO, on behalf of all municipalities. His co-operation has been tremendous over his term during the various consultations, the various bills. We may see him again, as chair of the regional municipality of Durham, but I have to say his time as president of AMO has been very valued and his co-operation on behalf of municipalities has been very strong. It's been a strong voice. I'd like to thank you and wish you well as you continue your work as chair of the regional municipality of Durham. I hope to see you again soon on some other issues which reflect the interest that you bear so well on behalf of your people in Durham.

The Chair: Thank you, Mr. Sergio. A very long 13 seconds, but well deserved. Thank you, Mr. Anderson.

CANADIAN WIND ENERGY ASSOCIATION

The Chair: Our next delegation is the Canadian Wind Energy Association. Are they here? Come forward, please. As you get yourself settled, you can pour yourself a glass of water and settle yourself down. When you are seated and you're comfortable, if you could introduce yourself and the organization that you speak for, for Hansard. When you do begin speaking, you'll have 20

minutes. Should you use all of the time, there won't be an opportunity for questions, but if you leave time at the end, all three parties will be able to ask questions about your presentation. We have your presentation here.

Mr. Robert Hornung: My name is Robert Hornung. I'm the president of the Canadian Wind Energy Association. As the Chair has stated, you have copies of a presentation that I'll be speaking to here this morning.

I keep looking behind me a little bit. I may have one colleague join us partway through this.

Interjection: She's here.

Mr. Hornung: Oh, she is? Do you want to come up?

The Chair: We're flexible.

Mr. Hornung: Thank you. I appreciate the flexibility. This is Liz Cussans. I'll let her introduce herself. She has come here with me today. She represents Vision Quest Windelectric, a wind developer with interests across Canada and Ontario. Do you want to state your position, perhaps?

Ms. Liz Cussans: I'm the development and operations manager for Vision Quest, which is TransAlta's wind business. I focus purely on Ontario. Vision Quest focuses purely on wind development within TransAlta, an energy company.

Mr. Hornung: The Canadian Wind Energy Association is the national industry association for the wind energy industry. We have over 240 corporate members, made up of wind turbine manufacturers, component manufacturers, utilities, project developers, service providers. We have an Ontario caucus of our membership that involves about 70 of our members who are very interested in developments with respect to the wind energy industry in Ontario.

There certainly has been a lot of movement with respect to wind energy development in Ontario. As you know, the government has indicated that it is seeking 2,700 megawatts of new renewable energy capacity by 2010. It has issued requests for proposals for some of that power. Wind generation has been fairly successful in those requests for proposals. We now have 220 megawatts of wind energy capacity installed in Ontario. We have 1,000 megawatts that have signed power purchase agreements and will be building over the next couple of years. The government also recently initiated a program of standard offer contracts to support the development of smaller projects throughout the province.

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Wind energy is likely to play an increasing role, looking forward in Ontario. The Ontario Power Authority, in its recommendations with respect to the supply mix, has advocated that Ontario look at moving to 5,000 megawatts of wind energy by 2025. This priority of the government in terms of securing new renewable energy generation has been reflected in some initiatives that have had an impact for municipalities; for example, changes to the provincial policy statement and inclusions around greenbelt legislation with respect to renewable energy sources.

We're here today to speak about Bill 51, and in particular one portion of Bill 51, section 23. Section 23 has generated a lot of discussion and a lot of interest because of the proposal that certain energy projects, including category (b) projects under regulation 116/01 of the Environmental Assessment Act, which would include wind energy projects of more than two megawatts, would be exempted from the Planning Act approval process under the terms of Bill 51.

We're here to state that we strongly support that section 23 because we see it as a very useful tool to help eliminate a lot of duplication and overlap that currently exists between the environmental assessment process and the planning process. At the same time, we strongly believe that issues of concern to municipalities clearly must be addressed in approval processes, and municipalities clearly must have the opportunity to be involved very actively in those decision-making processes.

With respect to the overlap, we wanted to take a second to highlight that. It's important to know that the environmental assessment process doesn't only speak of the environment in non-human terms, in terms of the impact on water or air; it also speaks to the impact of projects and new proposals on the human environment. The current EA process reviews the potential negative effects of a project with respect to the displacement, impairment, conflict or interference with existing land uses, approved land use plans, businesses or economic enterprises, recreational uses or activities, cultural pursuits, social conditions or economic structure. So the mandate and scope of the environmental assessment process is quite broad and we feel overlaps many of the issues that are currently also looked at under the Planning Act. We note that both the Planning Act and the environmental assessment process require extensive and documented public information, require consultation processes and allow for an external review of decisions to be made when a project is actually permitted, in terms of allowing for an appeals process.

One thing that we note from our perspective that we think is actually an advantage with the Environmental Assessment Act is that we believe it has more clearly identified and mandatory timelines with respect to project assessment, appeal and approval. Clearly, for companies interested in making investments, some certainty around when decisions will be taken, regardless of what the decision actually turns out to be, is a very important thing. So we think there is an issue with respect to overlap and duplication that section 23 can help address.

Many of the same issues are covered in both processes, but different stakeholders tend to be involved and they tend to operate on different timelines. The results, from our perspective, are delays and increased costs in permitting processes and approval processes whatever the outcome—whether it's positive or negative for a developer. We think it also puts an increased strain, in terms of the overlap and duplication, on municipal

resources that are already stretched thin dealing with the amount of stuff coming at them.

We wanted to provide a couple of generic examples of how overlap and duplication can have an impact based on things that we've already seen with wind energy projects in Ontario. For example, we've seen projects have issues of concern identified and have them raised to both the Ontario Municipal Board and the Ministry of the Environment for a decision. Both of those processes then conduct a review of those same issues. In our view, that's not an efficient use of resources. It's costly. It can lead to delays because the two processes won't necessarily operate on the same time frame—one might be completed before the other—and it extends the period under which a decision is made.

We've also seen situations where projects have completed their EA review, their environmental assessment, and then continued in the planning process and seen changes come about as a result of the planning process that have resulted in changes in the project which require the environmental assessment to be done all over again. Again, we just don't see that as very efficient. Our question basically is, is it not possible, in these cases where issues are common to both processes, to get the same outcomes through active participation by all stakeholders in one process as opposed to having to go through it twice?

From our perspective, section 23 of Bill 51 would allow one process to review and approve issues that are currently covered by both of the existing processes. We do believe, however, that Bill 51 absolutely must encourage municipal governments to become active participants in the environmental assessment process if there is just the one process. We think this would diminish the need for a separate review process. Right now, under the Environmental Assessment Act, essentially project proponents are encouraged to consult with municipal governments in terms of the EA process. We would be quite happy to see that strengthened to say that municipalities and local councils must be identified as key organizations that must be consulted through the EA process, because we know that in that process there are a number of issues that are of concern to municipalities and, again, many of the same issues that we see with respect to the Planning Act.

Having said all that, we also recognize that in the drafting of Bill 51 the overlap between the environmental assessment process and the Planning Act process is not 100%. Our focus here is, let's try to use section 23 to ensure that where there is overlap we've got one process, we proceed more efficiently to try to do that and encourage everyone to participate. But in areas that are not covered under the environmental assessment process, it's very clear to us that municipalities must continue to have a role. We've identified some examples here with respect to a wind energy project in terms of elements of a site control plan, in terms of 911 access points, road allowances for routing of cables, provision of rescue equipment and training to local emergency service

providers, and there may be more. We don't know that this is a comprehensive list, and we'd be very happy to see the committee reflect on where there is no overlap between and what that should imply in terms of how Bill 51 is drafted.

So again, from our perspective, we strongly support section 23 to apply in areas where there is duplication and overlap in the environmental assessment and in the planning process. We think there is a need to ensure we have one process for purposes of efficiency and resource constraints on all participants in the process. But we also support Bill 51 looking at and including provisions to ensure that the limited number of issues that are not covered under the EA process remain within the mandate and scope, obviously, of municipal governments.

Thank you very much. We'll be happy to answer any questions.

The Chair: Thank you. You've left three minutes for each party to ask questions, beginning with Mr. Prue.

Mr. Prue: Thank you so much. You were in the room; you've obviously heard that I've been questioning people about section 23. To tell you the truth, wind energy, maybe solar energy: kind of benign; the public mostly accepts it. But what you're asking—would you ask the same thing? What you're asking, to include the nuclear industry or those who would burn tires—they're all the same, they're all going to be exempt. Do you see your industry in the same light as those?

Mr. Hornung: I can take a first crack at this and say that I'm here today as a representative of the wind energy industry and looking at the impacts of section 23 with respect to our industry. It will be the judgment of others as to whether an exemption, if it is in place—to what energy sources that applies. But what I've tried to indicate here is that from the wind energy industry perspective and our experience in terms of going through both the planning and the EA process, we think there is significant overlap that could be usefully addressed through section 23 from the perspective of this industry.

Mr. Prue: Okay. Just so the committee has it clear, you're asking this for the wind energy industry and not necessarily for some of the others that might be far more contentious, which a town or a city may want to deal with, such as burning of tires or a nuclear plant or energy from waste. These are all pretty contentious things.

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Mr. Hornung: Again, I will just restate, as the wind energy industry, we don't really see it as our role to comment on how this would apply with respect to other energy sources.

Mr. Prue: This is difficult, and I'm having some difficulty understanding how the municipalities would then be involved. If you take out all of the environmental issues, there are still some things involved, I guess, in terms of planning. Do you see that coming after the EA process? Before the EA process? I don't know how the EA process would deal with land use planning or those kinds of things.

Ms. Cussans: Just for an example, in the majority of the wind energy projects that are going through permitting at the moment, the municipal council is using that environmental review report as their review document. The fact is, even with the two processes that are parallel, the environmental review report is being prepared first to support the municipal government decision. That picks up the majority of the issues.

As Robert mentioned, there is a planning aspect to the environment report, but it does cover, obviously, a larger remit, and that section of the report tends to be what the municipal governments receive along with the zoning application and official plan amendment application. Then they flick to that and say, "Okay, these are the issues that we would have raised, and this is how the project is preparing to address them."

The Chair: Thank you. Mr. Sergio.

Mr. Sergio: Thank you very much, Mr. Hornung, for coming and making a presentation on behalf of the Canadian Wind Energy Association. I can appreciate that you don't speak for other agencies, for other forms of energy. I'm going to ask a two-part question. At the beginning of your presentation, you spoke of securing new energy. How do you see this securing new energy and the role local municipalities play in facilitating those projects? Part two, the role of the local municipalities and local communities: How do you engage the two of them to see that there is healthy participation of the local communities in those projects as well?

Ms. Cussans: In terms of the involvement of the local communities, I think the government standard-offer-contract process has been a major milestone toward achieving that because it has opened the door for smaller projects, up to 10 megawatts, which are of a size such that co-operative groups, community groups and even individual landowners can be their own generators. They can actually help the province by generating electricity and feeding it into the grid. That's one of the policies that Bill 51 would actually help to achieve the goal of, to assist community projects to get off the ground.

Mr. Hornung: We can go a little further on that, just to say—Liz can speak to the details of it better than I can—that in terms of within the environmental assessment process, there are ample opportunities for all stakeholders, certainly including municipal governments, to have an influence in terms of what issues will be designated as priorities to be addressed, to comment on those as they're going forward and to be an active participant in the process.

As I said earlier, from our perspective—I'll use an issue like sound from wind turbines. We have a Ministry of the Environment standard with respect to sound from wind turbines. The environmental assessment process is going to consider and review whether or not that standard is met. Again, if there are particular concerns about that, there are certainly opportunities within the EA process itself to bring those forward so that those are considered at that time and not in different processes and at different times.

The Chair: Thank you. Mr. O'Toole.

Mr. O'Toole: Thank you very much. I'm very interested in your presentation. First, I'd like to be on the record as saying that I support sustainable energy solutions, as you've suggested, wind being one, and solar and other forms of utilizing what otherwise might be considered landfill materials, provided we're recycling, etc.

That being said, I think there are some inconsistencies here, as Mr. Prue's pointed out, and I guess, technically, even in your responses. You're doing the best you can.

First of all, the issue with wind is sort of the aesthetics one, and the light-interrupt issues. You know they're big issues. I've dealt with both of them in my riding. The light has this sort of flashing, strobing effect.

The thing in this whole sustainable discussion is that it's almost motherhood. It's very difficult to argue against it, and so the NIMBYs—it's a nice, clever little word to dismiss their concerns. This process exempts them totally. In fact, it's confusing. Under section 23, it kind of exempts them, and the regulations themselves. Anything under two megawatts is sort of "not interested," and anything over two megawatts is basically an environmental screen, which isn't a full process.

So there need to be some standards. You work in the industry. Other provinces have standards with respect to some of the issues, including setbacks and appropriate locations. As the international environment in your industry becomes more informed—most of this stuff is offshore, in Denmark and Holland. As they become larger and a more effective source of power generation, and the infrastructure needed to connect them to the grid, etc.—it's a very important thing. I think the province is exempting their real responsibilities, and I'd like a response to that, because also a local tier in my case—if you heard one of the earlier presentations, Eden, Ontario—may not even have an engineer work for them. Small towns like Uxbridge, where I'm talking about—

The Chair: Mr. O'Toole, you've got about 30 seconds for the answer.

Mr. O'Toole: Thank you very much. I look for unanimous consent, because we couldn't even convene meetings in other areas of the province.

The Chair: Mr. O'Toole, if you let them answer, they'll be able to finish with the time to—

Mr. O'Toole: Yes, I'll give them time, or they can send me a letter.

The Chair: They have 30 seconds.

Mr. O'Toole: The point I'm trying to make is Uxbridge—I think it should be an upper-tier responsibility. Roger Anderson, the chair of AMO—I'm bringing it up at AMO this year. It's a huge issue, because there is going to be a lot of them. For every 1,000, you need to install 5,000, because there's a ratio of what wind is blowing where.

This is a huge issue. It should not be exempt. The province has a major responsibility here to look at other best practices in provinces like Quebec, Alberta and PEI, and not hide behind section 23 and ignore small com-

munities that are being forced to deal with complex technical—highly valued, I might say—

The Chair: Mr. O'Toole, you've exhausted the time. Thank you very much. I'm sorry, there's no opportunity.

Interjection.

The Chair: I'm sorry, Mr. O'Toole. You have exhausted the time. We cannot even get the answer now.

Mr. O'Toole: Chair, I have a motion: I seek unanimous consent to give the deputation five minutes to reply.

The Chair: Mr. O'Toole has asked for unanimous consent for a reply. Do we have unanimous consent? I don't see unanimous consent. I'm sorry. If I don't have a nod, then I don't have unanimous consent. I don't, so that's failed.

We appreciate your time. Perhaps you can respond by e-mail or by letter with the answers to those questions. Thank you very much for being here today.

Mr. Hornung: Thank you very much for the opportunity.

ONTARIO LAND TRUST ALLIANCE

The Chair: Our next delegation is the Ontario Land Trust Alliance, Smiths Falls. Welcome.

Mr. Ian Attridge: Thank you very much.

The Chair: As you get yourself settled down, if you want to get yourself some water. We have your presentation in front of us now. When you begin, if you could introduce yourself and the group that you speak for so that Hansard has a record of that. When you begin, you'll have 20 minutes. If you leave some time at the end, we'll be able to ask questions.

Mr. Attridge: Good afternoon, committee members. My name is Ian Attridge. I'm the chair of the government relations committee of the Ontario Land Trust Alliance. We very much appreciate the opportunity to make this presentation to you today regarding Bill 51, the Planning and Conservation Land Statute Law Amendment Act.

We believe that Bill 51 is a substantial and positive step towards updating Ontario's conservation easement legislation. You may be well aware of the planning dimension of the bill, but also the conservation easement provisions later on in the bill are important to many of our land trusts. We in fact have 34 land trusts. We're members of the Ontario Land Trust Alliance, and we are charities involved in land donations, receiving land donations and purchases of ecologically, culturally and agriculturally important lands. Currently, we hold, collectively, about 90 conservation easements protecting some 10,000 acres across the province.

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Land trusts help to achieve government and public objectives in many ways. We are dealing with natural and cultural heritage, farmland, source water protection, land use and growth planning. We can assist that through the use of conservation easements. We also believe that there's an important role for the government to create a framework to support this private charitable activity

working in the public interest on the landscape of Ontario.

Conservation easements are restrictions on the land title that are negotiated between a landowner and a qualified organization—perhaps a government, perhaps a conservation charity such as our own. There are three main statutes which govern conservation easements in the province. Primarily these are the Conservation Land Act, the Ontario Heritage Act and the Agricultural Research Institute of Ontario Act.

What we'd like to do today is indicate our support for the provisions that are found in the bill regarding conservation easements but also suggest that there may need to be some fine-tuning in order to make them more practical, perhaps more efficient on the ground as we've experienced it in our work. So we have six recommendations here. I'll spend a bit of time reviewing those and then invite questions afterwards.

The first one is that in clause 3(6.1)(a) of the Conservation Land Act, there's a term that indicates that conservation easements will be "suspended" if there's a merger of title, namely, the conservation easement holder and the holder of the land are the same entity. We're suggesting that "suspended" leaves some unanswered questions and that perhaps "remains in effect," or some wording to similar effect, might be appropriate here.

The second recommendation here is that the bill's requirement under the Conservation Land Act, subsection 3(6.2), for written consent by the holder of the conservation easement regarding building or demolition perhaps may go too far. In fact, we're proposing here that the prohibition apply but that there be two ways that that can be exempted: first of all, looking at the actual conservation easement document, the document that has been negotiated by the parties; and secondly, the bill contemplates a registry of these easements, and therefore there may be notice provided in that registry that may provide further information beyond the outright prohibition suggested for this subsection.

In practical terms, it's our intent to require applicants for a building or demolition permit to disclose whether there is a conservation easement on the property, whether there is some restriction on title that may be affecting their application. That's our general intent, and I understand it was the general intent for this section to trigger the Building Code Act.

The third recommendation is to clarify the default provisions should a conservation body lose its status. Already there's a provision in the statute that would allow the Minister of Natural Resources to become the default holder of that and then have the ability to assign it on to an additional party. We're suggesting that perhaps there are some additional provisions that might be added to that procedure, namely, notice on title, a mandatory notice on title and on the registry, and that the minister be required to consider any preferred assignee that might be indicated in the document itself. Currently, there's no reference to that kind of consideration.

The fourth recommendation is that the registries that are contemplated by the bill in subsection 3(11) of the Conservation Land Act should be capable of applying to conservation easements put in place under other statutes, for example, under the Ontario Heritage Act and under the Agricultural Research Institute of Ontario Act. The Ontario Heritage Act does have a limited registry, but we're suggesting it's worthwhile to have a comprehensive registry in the Conservation Land Act and that there be a provision that would allow for that registry to apply to the other statutes. The details of that can be worked out for the registry in a regulation—that's what's contemplated by the bill—and that would allow sufficient time to integrate those procedures with the Ministry of Culture.

The fifth recommendation is that the bill should add provisions to require under the Assessment Act that property assessors take account of the impact of a conservation easement on the property value for assessment purposes. Currently, there is no provision for that. We've been asking for this for a number of years, and we've had some assurance from senior finance officials that they're open to that suggestion. Currently, we have an uneven practice by the Municipal Property Assessment Corp. and by the Assessment Review Board, so we're looking for providing certainty not only for those government-related entities but also for advisers and landowners who want to enter into a conservation easement. Having certainty as to the financial implications of this will help them get proper advice and be more willing to enter into these agreements for conservation purposes in Ontario.

The final recommendation that we've numbered here is that there are several provisions under the Conveyancing and Law of Property Act, the Land Titles Act and the Municipal Act that we feel should apply to the Ontario Heritage Act as well. It currently lists the Agricultural Research Institute of Ontario Act, and now it's proposed to add the Conservation Land Act. We're suggesting that the Ontario Heritage Act, the third statute that deals with conservation easements, should also be referenced there. We understand it's the intention that the Ontario Heritage Act be subject to the same rules as the other statutes. Here's an opportunity through Bill 51 to tweak that and put them all into the same package so that there are the same rules.

Finally, we'd like to indicate that there are further legal and policy directions that need to be pursued in order to improve the policy and legal framework for conservation easements in Ontario. Certainly, there is the need to develop a regulation to specify additional purposes for conservation easements; there is the need to develop provisions and procedural details for the registry, including extension to the Ontario Heritage Act and the ARIIO Act; integrating the legal and administrative provision for conservation easements under various statutes; refining other tax measures in order to enable conservation easements to operate more effectively; and that there are incentives in place to encourage landowners to enter into these kinds of long-term agreements.

We appreciate that these provisions may require further research and discussions, and we're certainly willing to engage in those with all parties, governments at all levels and with the broader land securement community. We offer our expertise and our on-ground experience.

In conclusion, we welcome these legislative proposals in Bill 51, those that deal with planning, that deal with the Conservation Land Act and complementary legislation, and yet we wish to see a few of them fine-tuned. We plan to continue our discussions with other land trusts and with other entities as may be necessary over the next several weeks, and we may submit further detailed proposals to you in order to provide further detail on our suggestions. We trust that these recommendations are helpful and that Bill 51, with some fine-tuning, will foster practical, effective and efficient use of conservation easements in Ontario.

The Chair: Thank you. You've left about three and a half minutes for each party to ask questions, beginning with Mr. Brownell.

Mr. Brownell: I've long been associated with history and heritage conservation and preservation back home in my riding of Stormont-Dundas-Charlottenburgh and certainly I'm familiar with easements in heritage through the Ontario Heritage Act, the Conservation Land Act and the Agricultural Research Institute of Ontario Act.

I'd like to go back to recommendation number 4. I do understand the connect between built heritage and natural heritage. I'm wondering, is this the intent, your interest in trying to bring those three acts together in a comprehensive registry? Could you expand on it a bit?

Mr. Attridge: I think there would be merit in bringing the three acts together. I don't think that's perhaps within the scope of this particular bill, but it is part of a longer-term legislative agenda that might be addressed. But I think the registry may be the start of that, so that there is one place to go where you can determine what the effect is on a particular parcel of land. You can look that up and find out whether a heritage easement, an agricultural easement or a conservation easement is applicable on that title, the nature of it, and therefore act accordingly, whatever that action may be that you're interested in. There is a municipal registry for heritage easements. However, it seems to be more limited in the types of information that might be contemplated than would be contemplated for the conservation land registry.

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Mr. Brownell: Could I ask, how limited? How limiting is it at the present time?

Mr. Attridge: I understand that only municipalities are required to establish those registries, and not the provincial government. The Ontario Heritage Trust, I believe, holds maybe 200-some-odd easements, both natural and cultural. I know that the city of Toronto has probably over 200 heritage easements now. This is an opportunity to bring some of that information together. I believe the heritage act only requires information on the

location and the land ownership, not the details of the content.

Mr. Brownell: Thank you.

The Chair: Ms. MacLeod.

Ms. MacLeod: Thank you, Madam Chair. I'll be splitting my question with Mr. Hardeman.

I just have a very quick question for you. I noticed in point 3 of your deputation you talk about, "Without public notice, there is no means by which the landowner, planning or other authorities can interact with the actual, legal holder of the easement." I'm just reminded of a conversation I had last week with the chair of the rural council for the city of Ottawa—we're the largest agricultural city, I think, in all of Canada. A good part of that is in my constituency of Nepean-Carleton. Land rights have come up quite a bit with our farmers, with our landowners and with our rural council. One of the questions they came up with in this respect with our chair, Bruce Webster, is that they feel they're going to lose legal recourse to property rights if elected officials are going to be able to have changes with the OMB. In particular, what they're afraid of is, for example, in Ottawa, ward boundary changes. The OMB actually stepped in at one point to protect rural farmers and landowners and indeed rural residents so that we would actually have a rural voice. I'm just wondering what your opinion would be on that.

It says "Smiths Falls" here. Is that where you're from? I'm just wondering.

Mr. Attridge: I'm actually from Peterborough. I'm the executive director and counsel for the Kawartha Heritage Conservancy. But the provincial office for the Ontario Land Trust Alliance is in Smiths Falls, in eastern Ontario.

Ms. MacLeod: So essentially what I'm looking for your opinion on is, do you believe that Bill 51 infringes on private property rights or landowner rights in rural communities?

Mr. Attridge: That's obviously a very large question.

Ms. MacLeod: But I feel you can answer it.

The Chair: How's that for a challenge?

Mr. Attridge: That's a large question. Perhaps I can turn my attention to the conservation easement provisions, which are the ones that we are addressing here and the ones that we've spent some time analyzing and circulating around our members. We feel that conservation easements are certainly something that is negotiated between the landowner and conservation charities such as our own. That is something that is negotiated. The terms of those are up to the individual parties to work out. So it's really up to the landowners whether they are interested in doing that. We're finding many are interested in that, particularly rural landowners. It's their choice. So it's an interest in land, it's part of their property interest. They can decide what they want to do with that. If they want to negotiate with us with respect to conservation easements, they're welcome to do so. There are tax benefits that come with that, federal tax benefits, and other aspects that may be attractive to

them—to some. It's not for everybody, but in the appropriate case and for significant properties, it's one of the tools that are available.

Ms. MacLeod: Thank you. Mr. Hardeman?

The Chair: She didn't leave you much time.

Mr. Hardeman: Thank you very much. I just wanted to ask a question about your number 1, "suspended." It would seem to me that there were some positives to having it suspended. If the easement and the property are owned by the same owner, that may very well be the opportunity for—the property owner may want to take the easement off before they deal further with the property. It would seem that this section would allow that, whereas if you went the other way, it would remain in effect. Then it would seem to me that there was no opportunity ever for a property owner, if he owns both the easement and the property, to divide the two.

Mr. Attridge: There are provisions for amendment—it's not captured within the bill—which I believe were put in place in Bill 16 back in December, that still would require the consent of the Minister of Natural Resources for changes or releases of conservation easements.

The Chair: Mr. Prue.

Mr. Prue: I'd just like to spend my time on your recommendation 5. We've discussed this before.

Mr. Attridge: Yes, we have.

Mr. Prue: Yes, but our discussion is a little bit fuzzy to me at this point. How many people, in all the negotiations that you've filed, have raised the issue of the Assessment Act impacting on whether or not they're going to sign on with you?

Mr. Attridge: I'm aware of at least one transaction I was involved in where, because there was no specific guidance in the legislation and there was a mixed MPAC practice and mixed results through the Assessment Review Board, the landowner felt that they could not enter into a conservation easement because they could not get certainty from the legislation, and when they sought advice from their advisers and from us, we were not able to provide that guidance. It's a bit of a crap shoot.

Mr. Prue: Obviously you've been to the minister or the ministry itself. Have they told you they're working on it, they're looking at it, they're not interested? What's their position?

Mr. Attridge: I believe that there is some interest. Perhaps it's finding the right vehicle. This bill, because it's dealing with conservation easements, may well be the appropriate vehicle. There may be other finance bills that are coming forward where perhaps this could be considered. This is the type of provision that's in place in British Columbia. It's in place essentially across the United States. Each state has its own assessment legislation and incentives and various other things. It's in there. I don't understand why we don't have it in Ontario. We have it for common-law easements and covenants but not for conservation easements.

Mr. Prue: I find this rather strange because, on the one hand, the government of Ontario prides itself on its

environmental responsibility, which is what these easements do, and on the other hand, they make no provision to allow people to enter them without fear of having their taxes go up. It seems bizarre.

Mr. Attridge: I can't explain why this hasn't moved forward before. I know that there remains some interest within government, within different ministries, in moving it forward. I guess it's finding the appropriate vehicle to move it forward. This committee may be able to do that.

Mr. Prue: To date, do the MPAC assessors just treat the land as ordinary, as not having an environmental purpose that's clearly designated and designed?

Mr. Attridge: Sometimes they don't understand conservation easements. Sometimes they will take an off-the-shelf 50% reduction. Perhaps that's also the decision of the Assessment Review Board. That may not reflect the value of that particular conservation easement. When we receive a donation of a conservation easement or when we purchase a conservation easement, we typically get an appraisal to substantiate that value for tax purposes or to substantiate the value that we're paying for that easement. That appraisal could easily be used as the baseline for assessing the percentage-of-value impact and would be very straightforward for the MPAC assessors. We feel it would be a simple system if the direction was found in the legislation.

The Chair: Thank you, Mr. Attridge. We appreciate you being here today.

Committee, this brings to a close all of our delegations this morning. We're recessed now until 1:30 sharp.

The committee recessed from 1219 to 1332.

CITY OF BURLINGTON

The Chair: Good afternoon, committee. The standing committee on general government is called to order. We're back this afternoon to commence public hearings on Bill 51, the Planning and Conservation Land Statute Law Amendment Act, 2006.

Our first delegation is the city of Burlington. Welcome, Mayor MacIsaac. If you could identify yourself and the individual who is beside you, and the organization you speak for, for Hansard. You will have 20 minutes. If you leave time at the end, there will be an opportunity for us to ask questions.

Mr. Rob MacIsaac: Thank you very much, Madam Chair, and thank you to the committee for allowing this opportunity to speak to the planning process and the reforms proposed in Bill 51.

I'm joined by the city of Burlington director of planning, Mr. Bruce Krushelnicki, who is also going to make a few remarks this afternoon. We're going to try to be reasonably brief so that there will be some time for questions.

I want to take this opportunity to acknowledge the government's work in bringing the province back into the planning process. For many years, Ontario has not been strategic in its approach to managing growth. From my perspective, we haven't been focusing enough on maxi-

mizing the benefits of growth or minimizing its impacts. Furthermore, we haven't been very good at recognizing the connectedness of things. In many respects, our approach to growth in the province has been balkanized.

Our message to you today is that the total package of reforms that are being proposed by the government—the greenbelt, Places to Grow, the role of the OMB, the new provincial policy statement, and now Bill 51—represents a new and deliberate approach that is unprecedented in recent history, and a very welcome approach.

In my view, these reforms affirm the principle that elected officials at the local level, aided by an increasingly qualified planning profession, can be trusted to decide matters of local policy, and they can do so responsibly and fairly, and with fewer and less complicated appeals to the Ontario Municipal Board. These reforms also embody the principle that where an appeal is lodged on a difference of opinion about local policy, the decision by the municipality will have some influence on the outcome. Among this group of reforms, I would like to speak specifically to the issue of complete application and new information. Mr. Krushelnicki is going to provide some comments on the protection of employment lands, the issue of the Clergy principle and design issues in planning.

To begin, the issue of complete applications, while present in many municipalities, rose to special prominence for us in Burlington where a well-known landowner made application and provided the absolute minimum information as required by the law as it now reads. We asked for further simple, basic information that would be routinely necessary in order to conduct a responsible review of the merits of the application—traffic studies, servicing studies—and were refused by the developer. The issue ended up in the courts, and we lost. Somewhat unusually, the court expressed some sympathy for the city's position but was unable to render a decision in our favour due to the state of the law.

The intent of the landowner in this instance was clearly to wait out and ignore the local review process so the matter could be put to the board, where of course the information we requested would eventually be provided. In effect, the developer was able to sidestep the local municipal review process, which in our view is profoundly disrespectful.

The reforms embodied in the legislation before you will provide the local council and planning staff with the authority to require the information needed to properly assess an application in light of local and provincial policy and, of course, the principles of good planning. If the requirements for further information are too onerous, there is recourse to the OMB. However, the application is not complete and the “appeal clock” does not begin until the information needed to assess the application is received.

Now, I know there have been some concerns expressed by some in the development industry, and in response to this the planning task force at AMO, which I chair, has worked with those developers to craft language

to ease their concerns about municipal abuse of this issue. I was able to review AMO's submission from this morning and am supportive, of course, of the AMO compromise set out there.

Let me turn to the reforms governing the information and evidence that can be brought to a board hearing and the limitation on the board's ability to revise an application beyond what was first seen by the local council. We encourage you to retain the principle that the OMB should only be able to deal with the same matter that was dealt with by a local council. This limits the ability of the board to revise an application without notice and without referring it back to the local decision-making body. It is also a limitation on the introduction of new information that was not made available to the local council when it made the original decision. Again, efforts have been made to refine this limitation, and we at the city are supportive of the compromise position that has been offered by AMO in this regard.

These reforms restore a fundamental respect for the decision-making process that takes place at the local level, and they send a clear message to the public about the role of the OMB: that it is adjudicative and not supervisory. The role of the board is to settle fairly and finally legitimate planning issues.

I'm now going to ask Mr. Krushelnicki to make a few comments.

Mr. Bruce Krushelnicki: Thank you, Mayor, Madam Chair and members of the committee. As a practising planner, I want to begin by reiterating the mayor's expression of our appreciation to the government for the various initiatives that have been proposed in the last few years. Among the most important of these, in my estimation, has been the attention given to employment lands.

The protection of employment lands is extremely important to the economic health of local municipalities and vital to their development as complete communities, that is, communities in which people can live, work and play with a minimum of travel. To this end, we support the government's two main initiatives of protecting employment lands from piecemeal conversion to other uses.

The first initiative is the bolstering of the employment lands status in the new 2005 provincial policy statement, the PPS, as you'll know it. The second initiative is the prohibition against what are commonly called “private appeals” to the OMB. Appeals of this kind are common, and although they may represent a cost of doing business to some landowners, defending employment lands from conversion represents a costly and time-consuming diversion from the main planning efforts of many mid-sized municipalities.

In Burlington recently, we spent more than \$1 million in consulting time, lawyers and staff time protecting a significant acreage of employment lands from conversion to other uses. Shortly after learning that the board had ruled in our favour, a new application for conversion was filed just days before the new PPS, which protects

employment lands, was issued. We may now be into another million-dollar defence of the very same lands in Burlington.

Ensuring an ample supply of lands for offices and factories aids in representing and promoting a municipality to prospective employers. This is only possible if we can assure them that they will find well located and reasonably priced lands suitable to their needs. We must also maintain an ample supply to accommodate expanding existing industries within Burlington.

1340

Importantly, the proposed reforms to protect employment lands assert that such decisions are beyond appeal, except at the time of the mandatory five-year official plan review. Again, we urge you to retain the principles embodied by these planning reforms. Continue the firm line of protecting employment lands from conversion and continue, please, the limitation on other private appeals.

On another subject of OMB procedures, we urge you not to relent on the position taken regarding the "Clergy principle," as it's known. This principle arises from a well-known OMB case in Mississauga having to do with a company called Clergy Properties. The principle states simply that an applicant has the right to have a development application assessed on the basis of the policies that existed at the time that the application was made. Under most circumstances, this is fair. However, in the real world, policies and best planning practices change gradually over time to accommodate innovation and to incorporate new professional skills and knowledge into our local policy.

Unfortunately, what started out as a principle of fairness has been elevated to a rule that can sometimes have patently absurd results. Some applicants, for instance, have taken unfair advantage of the Clergy principle by filing what we call "place-saver" applications. These are meant to achieve nothing more than to allow them to bring an often complicated and environmentally difficult proposal forward at some time in the future and have it assessed on outdated and sometimes patently obsolete planning policies.

The legislation before you asserts that all planning decisions must be consistent with the PPS and must conform to provincial plans and policies as they exist on the date that the decision is made. Some will argue that this is unfair and, if abused, could amount to retroactive regulation. On the contrary, we would like to remind you that when new development or redevelopment is approved, it will be around for many decades. For this reason alone, the responsible position is that any assessment of development, especially significant proposals involving complicated environmental or social issues, must be made on the basis of the most recent, up-to-date research and the very best state-of-the-art practices of planning, engineering, design and environmental evaluation available at the time that the decision is made.

The third and final area that I would like to draw to your attention is the increased authority to deal with matters of design and architecture made available by this

legislation. With the creative use of design guidelines, planners have been able to insist on the use of high-quality building materials. They have drawn greater attention to matters of form and massing of development and the relationship that new development must have to the existing context. Above all, planners can now insist that new built spaces retain a relationship with the public realm in the form of streetscapes and important view corridors. In other words, planning has evolved to include public aesthetics as an integral principle of good planning.

Having said this, we acknowledge the small but very important amendment to subsection 41(4) of the act which deals with site plan approval. The amended section provides for a much more extensive listing of items that may be required in development proposals that a municipality must approve in selected areas. This new authority permits us, under prescribed conditions, to review a whole new range of matters of "exterior design," including "the character, scale, appearance and design features of buildings." This is a small but very important step that must be accompanied by a responsible effort at the local level to provide design and site planning guidelines that will lead to a transparent and productive process of architectural review. We look forward to this new authority and urge you to defend this initiative against those who would argue that it amounts to a regulation of taste.

Mr. MacIsaac: Once again, we would like to thank you for the opportunity to be here today. Going forward, we know that the vast amount of growth will come in the form of redevelopment of older areas, infill in existing stable neighbourhoods, and intensification of low-density residential, commercial and employment lands. This is absolutely necessary if we're going to realize the benefits of the greenbelt and Places to Grow.

This is a new reality for Ontario residents and developers. In order to gain any level of community acceptance for our growth plans, we have to demonstrate to our constituents that their local council and planners have the authority to develop complete, prosperous and vibrant communities. They have to know that our local decisions will be respected and that those decisions will be made with the advantage of full information and state-of-the-art research and policy. They have to know that we will have the tools to plan and build communities with attention to great architecture and public spaces.

These proposed amendments to the Planning Act represent the next stage in the evolution of local government. The reforms reflect the re-entry of the province, including the OMB, as a positive force for change at the local level and provide local officials with the authority to assert the public interest in building our communities.

Thank you very much.

The Chair: Thank you. You've left about two minutes for each party to ask a question, beginning with Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. There are two or three items that you mentioned that I'd just like to cover. The abuse of the use of the complete application—I've heard from a lot of people who oppose that part of the bill, and they suggest that municipalities use that on a regular basis to put off making a decision on the application. They say, "We need more information. This is not a complete application." They then provide more and the answer is, "Yes, but that's still not sufficient; we still need more," and it just keeps dragging on. That's one concern.

The other concern is the issue that you can only present at the Ontario Municipal Board what you presented to council when the application was heard. The concern is that council generally does not take the time required to hear a complete application, much less to ask for the information. So the applicant is concerned that we will not hear all the information; council will just not be willing to take the time to do that. If you look at an application that's going to the Ontario Municipal Board and the length of time it takes the applicant to present that application, that's not the amount of time that councils are taking to hear the original application. So they really believe that somehow some of this information that may not have been there first needs to be there second. Any comments on that?

Mr. MacIsaac: Yes, I guess I have two comments. First of all, with respect to municipalities abusing the process, there are safeguards in place that will allow developers, if they choose, to go to the board and say, "Look, we think it's a complete application. We want a ruling from you on that." AMO made a similar proposal. There's a way to find a balance between the two spots. Let the board make rulings on whether or not an application is complete.

Mr. Hardeman: But that would require an amendment to the act.

Mr. MacIsaac: I believe that's true. Right.

Mr. Hardeman: This act as it's presently written doesn't accommodate for the OMB to decide on the completed application without council having heard it?

Mr. MacIsaac: No, I think it does. Go ahead, Bruce.

Mr. Krushelnicki: Yes, it does. There are two safeguards in place that I think are important to mention. One safeguard is that we have to stipulate—I say "we" as planning officials—in our official plan documents exactly what sorts of reports we may need in any given situation. That has to be spelled out well in advance through our official plan policies. Then, as the application comes in, we can say, "Okay, on this application, we need a traffic study, a shadow study, a sewer study." That's the list we can choose from.

If we start asking for studies that are not on the list, if we ask for studies that they think are irrelevant or superfluous or are just there to waste time, there is recourse to the Ontario Municipal Board. You can make a motion and say, "Look, we think the application is complete. Make a ruling on our behalf." If the board rules, that's when the clock starts.

The point of the legislation which is good is that the appeal clock doesn't start until that ruling has been made, until either we determine the application is complete or the OMB does, and they have lots of recourse for that.

Finally, there is ultimately the board hearing on the merits of the application if it goes that far.

The Chair: Thank you. Mr. Prue.

Mr. Prue: You didn't address this, but I think, Mayor MacIsaac, you're probably pretty up on this. Section 23 of the act takes away the right of municipalities to make decisions under the Planning Act relating to energy projects. Should the municipalities be involved?

Mr. MacIsaac: I would expect that, notwithstanding the fact that that provision is in there, it would be foolhardy for a provincial government to come in without having some municipal involvement in the process.

1350

Mr. Prue: How would municipalities be involved in the process if it's left up to the environmental agencies?

Mr. MacIsaac: I can't speak for how the province is going to manage it. But what I do think is that without involving municipalities in some fashion, the province would certainly be acting at its own peril.

I understand why this is here. This province has been built on the fact that we have a reliable source of power supply. It has been a fundamental part of economic development in this province for many, many decades. If we do not have a reliable power supply, there's a whole other set of considerations that are going to come to bear.

The Chair: Mr. Sergio.

Mr. Sergio: Mr. Mayor, thanks for coming and making a presentation to us today. You didn't get away from Burlington because it was raining there, was it?

Mr. MacIsaac: It rained all the way in, actually.

Mr. Sergio: It's the particular interest you have shown, and we appreciate that. At the beginning of your presentation, you proposed \$1 million for fighting some application in your municipality. When the minimum information is provided to you as a municipality, and then, just prior to the OMB making a decision, the applicant comes up with new, revised minor or major information, how would you like to see that information treated by the board: as major and send back the application to council as a new application, or leave it to the discretion of the OMB?

Mr. MacIsaac: We have another file at the board where a developer made an application to convert from employment lands to residential and then, in the middle of the hearing, essentially said, "No, we changed our minds. We now want a retail designation." So it's a fundamentally different application that's now before the board and it has never gotten back before our council. I think there's no doubt that where there is a fundamental change in the nature of the application, such that important new information of that nature is being introduced, the board ought to lose its jurisdiction. The process should have to originate with the local council.

The Chair: Thank you, Mayor MacIsaac. We appreciate your being here today.

ORLANDO CORP.

The Chair: The next delegation is the Orlando Corp. Good afternoon, Mr. Kramer. We appreciate your being here today. Thank you for coming. As you get yourself settled, if you want to pour yourself a glass of water, please make yourself at home. We have about 20 minutes for your delegation. If you could identify yourself and the organization you speak for so Hansard has a record of that, then when you begin, after you've introduced yourself, you'll have 20 minutes. If you leave some time, there will be an opportunity for questions at the end.

Mr. Gary Kramer: Thank you very much, Madam Chair, members of the committee. My name is Gary Kramer. I'm a development manager with Orlando Corp. We certainly appreciate the opportunity to address the committee and offer our input on this bill.

The province has demonstrated its initiative and leadership on the approval of the new provincial policy statement, the greenbelt plan and the growth plan, which are designed to shape our communities, create certainty, provide real solutions to direct and manage growth. They certainly give us what developers need, which is certainty. The province also seems committed to meaningful planning solutions through Bill 51. We're pleased to offer our experience as it relates to the delivery and function of employment lands.

A little bit about Orlando Corp.: We are an Ontario-based company. We have been involved in the development, building and ownership of large business communities throughout the GTA over the past 60 to 70 years. We have constructed somewhere in the neighbourhood of 60 million to 70 million square feet of employment properties. We have retained ownership of approximately half of that amount through several business parks, from Richmond Hill in the east to Milton in the west. Our premier business park in the GTA is the Heartland Business Community. Some of you may be familiar with that. That has evolved over the past 20 years. Our new park is the Churchill business park in Brampton.

While employment lands share some similarities with residential lands through the development process, there are some fundamental differences, with the purpose of making them more adaptable to employment lands. Certainty, clarity and consistency are important, but we also need creativity, flexibility and innovation. That is required in order to make us competitive with other provinces, as well as the bordering states, such as northern New York. We've provided a full submission to staff on this, and I'd like to concentrate on some of the key issues.

The first is site and building design. As you know, in subsection 15(2) of the bill there's some consideration for "character, scale, appearance and design ... of buildings." We feel that this added requirement has the potential to unreasonably or negatively impact the function, costs and delivery of a design-build project. There are already rigorous urban design criteria in place in most municipalities that we've been dealing with, and

additional requirements have the potential of being misapplied by municipalities, which leads to increased disagreements and to frustrating and discouraging development activity. We feel that the design of development should rather be applied flexibly through general guidelines, creative discussion, negotiation with developers and municipalities. Having overly restrictive policies and regulations in place should be avoided, in light of the principle that the building's overall function will largely determine its built form. This is the way that approximately 1,000 square feet of prestige industrial buildings have been developed in the Heartland Business Community.

It's initially the building use that determines its function in terms of the size and shape of the building, taking into account the office configuration, plant function, orientation, and then the services and loading areas to suit. So building function determines the built form, and building function should therefore be given the priority. The design features after that should be secondary, enhancing the project to the greatest extent possible but not controlling the project.

The second issue is sustainable design and development. This term is now introduced in the bill, subsection 15(2), and also in section 2, under "provincial interest." It remains undefined. We don't have a clear definition of what it is in the bill or PPS or the growth plan. We feel a balanced approach in the definition of "sustainable development" is required, both in terms of economic sustainability as well as environmental sustainability. We feel sustainable economic development means the economic viability of the building and the site, which has to remain fundamentally competitive because essentially building costs determine lease rates, which determine the viability of the project.

Current initiatives by the conservation authorities and municipalities have focused only on environmental sustainability. That has the collective impact of decreasing density on employment lands and increasing costs. They've initiated green roofs, infiltration mats, drainage ditches and stream buffer zones. All these items lead to increased costs of the building. For example, a green roof adds 60% to the cost of a building, which essentially makes the building economically unviable. Of course, it would never be built. If we don't consider the economic sustainability as a key component, we'll lose competitiveness within the GTA and with the border states.

Intensification—regulation of minimum areas, densities and heights—again, businesses already are intensification-oriented. They require minimum land areas to accommodate the function of their business activities. Intensifying employment areas through new imposed regulations or initiatives has the potential of being, again, misapplied, impeding the proper and efficient function, layout and orientation of the buildings. If there are policies put in place, they must be tempered to meet tenant needs first and foremost.

1400

Overregulation of site and building design leads to increased construction costs, making us uncompetitive, and requiring more intensive uses, such as multi-storey facilities rather than low-rise manufacturing and warehousing, is restrictive. Low-rise warehousing and distribution facilities typically require large land areas to function, and they are compact in terms of the function without those regulations in place.

In summary, we ask that you don't try to create or change the marketplace. We cater to the warehouse distribution market in the GTA, such as the Heartland Business Community. On the flip side, we have tried to initiate certain things, ways of providing intensification through minor realignments of natural features, and we feel that these should be reasonably permitted where there's no impact on the natural habitat, thereby increasing land efficiencies. In addition to that, the issue of on-site stormwater management is another concept that we've initiated. Both of these initiatives have been made in the Churchill Business Community in Brampton. We feel that they will achieve the intent of subsection 14(3) of the act, minimizing site area for development. We can provide examples of that, but they essentially will reduce the land requirements by about 10%. That's the conflict between environmental sustainability and intensification. So there has to be some clarity on that issue.

On a couple of the other issues—enhanced information requirements, public notice, information consultation to be incorporated into official plans and zoning bylaw documents—it's really uncertain as to what effect this will have, but our experience is that the process is already cumbersome and time-consuming. For example, in the Churchill Business Community we're still awaiting a resolution of the environmental implementation report, which has been in the works for about four to five years, and that's the creek realignment and stormwater management issues that I was referring to.

Conversely, the design and building of employment lands sector is very time sensitive and we need to resolve development issues fairly quickly after a deal is structured. There's not a whole lot of time to develop and service the land and construct the building and deliver the finished product to the client if those delays are in place. So we have to be very careful that adding time to the development process through additional meetings and information requirements, either at the beginning of the development process or at the end, doesn't delay that process.

Conversion of employment lands: We'd like to see the OMB appeal opportunities on the conversion be maintained. Subsection (7.2) puts restrictions on the conversion. We feel that large, redundant sites where employment lands—some of them could be more effectively revitalized with mixed-use and retail/residential land use schemes. We feel that they may actually serve the better interests of the community at certain locations on a site-by-site basis. Having a long list of criteria for conversion of those sites to whatever use could be

difficult. Not allowing flexibility to the developer will result in lands being vacant for a longer period of time.

Alteration of settlement area boundaries: We feel that in designated areas of employment the OMB appeal rights should be maintained for privately initiated amendment applications, if refused by council. OPA applications may suffer at the hand of ratepayer groups where local councillors might be overly sensitive to their concerns. The primary issue should be the consideration and reliance on the efficient and rational use of existing public infrastructure. That should be a primary concern, and the denial of the opportunity to appeal is essentially at cross purposes with the objectives of protecting and promoting employment lands.

We feel that the amendments to the power of the OMB should be re-evaluated. Again, our municipal electoral system doesn't always lend itself to permit councillors to make global decisions in all instances. The strong voice of a minority often influences the parochial in their decision-making. An effective OMB should be available to make the decision based on the facts and the provincial policy. Eliminating the evidence in an appeal to the OMB is also a concern and may affect the best planning decision on an application.

In summary, in order to implement the changes, we request the committee to:

(1) broaden the economic objectives by directing the staff to recognize the distinct nature of employment lands compared to residential lands and, through the comments that I made, avoid over-regulation of site building design, intensification and sustainable design;

(2) focus on flexibility, creativity and innovation, and state in the act that the function of the building governs, as well as ensuring that economics is a founding principle in sustainability, that you can't always rely on just environmental sustainability but it also has to be economically viable; and finally,

(3) require an implementation manual to clearly inform, educate and give direction to municipalities in the interpretation of Bill 51, particularly in terms of the impact that these initiatives that I mentioned will have on the employment lands section.

We have discussed this with staff. We think it's a good idea and would like to be involved in that process.

Those are my comments. Thank you very much.

The Vice-Chair (Mr. Jim Brownell): Thank you very much. We have about a minute and a half for each party, starting with Mr. Prue.

Mr. Prue: Thank you very much. You have given a deputation which stands at some considerable odds to that which we've heard from the Association of Municipalities of Ontario and other municipal leaders. Has it been your experience that municipalities have actually stood in the way? I'm just trying to think of where you're from—Mississauga. Every time I go to an event, Hazel McCallion gets cheered by every developer in the room.

Mr. Kramer: I must say that Mississauga is one of the better municipalities. There are other municipalities where it's a little bit more difficult. As I mentioned,

we've been in the business in Mississauga for about 20 years and have worked out a rapport with the municipality. They have a lot of guideline documents that are good—and they are referred to as guidelines—and we've had a good working relationship with staff in meetings and discussions and so on. That's the way it really should occur.

Mr. Prue: So I take it, then, the problem is not the act but the actions of the municipality. It's how they see their municipality developing. In the case of Mississauga it's not at odds with your goal but in other municipalities it may be.

Mr. Kramer: That's right. It depends on the municipality. It depends on what policies are incorporated into their official plans as a result of these amendments to the act. At the end of the day, five years from now or whenever it's time to develop the lands, it's a function of how the municipal staff interpret those policies. And then that's where the conflict occurs. So at the end of the day, it's really, what are those elements in the act? Are they strict policies, or are they to be interpreted as guidelines by staff? I think that's what the implementation manual could achieve. It could achieve that issue.

1410

The Chair: Thank you, Mr. Kramer. Mr. Sergio, you had a question?

Mr. Sergio: Thank you, Madam Chair. I have a couple of questions, but we don't have too much time.

Mr. Kramer, thanks for the presentation. If Bill 51 will be approved as it is, it gives municipalities quite a bit of new power. In your presentation, you mentioned intensification and some of the difficulties you have with not intensifying to the limit of the needs of your client, let's say. In order for the local municipality to achieve some orderly development, if it is an employment area or a residential area, in order for the local municipality to do the good work in the local area and have good developments of any kind, do you think they are right in imposing some restrictions?

Mr. Kramer: Well, I think what I'm saying is, we have to be careful that we don't put intensification requirements into bylaws that don't allow us to fit that tenant into that building. And that's where the flexibility comes in. We have to make it as flexible as possible so that we can capture as many of those tenants as we can.

We feel that intensification will come over time. In fact, we have some of our older parks, constructed 40 or 50 years ago, where in a few years it might be time to redevelop those parks because of new technology, higher buildings, which are probably twice as high right now. So we feel that that intensification is sort of a natural process that will happen, rather than applying those strict policies now that restrict a tenant from moving into the building, whether it's an office building or a—

The Chair: Thank you.

Mr. Sergio: Are you talking intensification—

The Chair: I'm sorry; we've run out of time. Ms. MacLeod?

Ms. MacLeod: Thank you, Mr. Kramer, for your very informative presentation to us today. I'm concerned with your OMB reform issues, in particular with something that's not mentioned here, but I just want to repeat this: Permit municipal councillors to make global decisions in all instances where our electoral system doesn't lend itself to permit that. You also say that the strong voice of a minority often influences municipal politicians to be parochial in their decision-making.

Now, I'm just concerned about these local appeal bodies. I'm wondering if you think that the local appeal bodies would sort of lend themselves not to be able to make global decisions, and perhaps a minority might influence that particular body at the municipal level. Any comments on that?

Mr. Kramer: I can give you an example, a situation of land that's currently outside of the urban area boundary, that's outside of the greenbelt plan that's within the town limits. It's a parcel of land that for a number of years has not been included in the urban area boundary for essentially those reasons. It abuts an estate residential block of land where the residents have continually raised their objections to those lands being included, so therefore they're not designated for employment use. They abut a major parkway; they're close to all the services and utilities that are necessary to develop those lands. Of course, the growth plan makes statements on making the most efficient use of land where the services are available, but in this particular case they abut an estate residential plan. So if at the end of the day the council decides that those lands should be included in an urban area boundary—and that's the right thing to do. But what if those lands never are included, yet they're the best use of the land? That's really the point we're trying to make.

Ms. MacLeod: Would you say that—

The Chair: I'm sorry, your time is up.

Mr. Kramer, I appreciate you being here today. Thank you for your delegation.

Mr. Kramer: Thank you very much.

ASSOCIATION OF MUNICIPAL MANAGERS, CLERKS AND TREASURERS OF ONTARIO

The Chair: Our next delegation is AMCTO, the Association of Municipal Managers, Clerks and Treasurers of Ontario. Welcome. Please make yourself at home. If you could identify the organization you speak for and your names for Hansard after you've settled yourself. Once you've begun, I will give you 20 minutes. Should you leave time at the end, there will be an opportunity for questions:

Ms. Kathy Coulthart-Dewey: My name is Kathy Coulthart-Dewey. I'm the president of the Association of Municipal Managers, Clerks and Treasurers of Ontario, AMCTO for short. I'm here today to speak to you with respect to Bill 51. With me today is Frank Nicholson, the manager of legislative services.

First, let me say a few words about AMCTO. We are Ontario's, and indeed Canada's, largest association of municipal managers and other professionals. Our 2,200 members work in a range of departments in municipalities of all sizes across the province, from the city of Toronto, with 2.5 million residents, to Tay Valley township, where I am the CAO, with a population of only 5,000.

Founded in 1938, AMCTO has as its guiding objectives the promotion of excellence in municipal administration and management. We are widely known for our high quality education and professional development programs. For people wanting to enter local public service, AMCTO has long offered courses in municipal administration, finance and law, to which we have recently added a comprehensive diploma in municipal administration. AMCTO also offers training workshops to help people already in the field stay on top of developments. AMCTO's certified municipal officer or CMO designation is widely recognized as the predictor of success by municipalities looking to hire progressive management.

Another key AMCTO activity is our ongoing review of provincial policies, legislation, regulation and programs. In this work, we draw on the large and diverse pool of expertise represented by our 2,200 members. The perspective that we bring to this task is a very practical one. We ask such questions as: Does the initiative take into account the different kinds of municipalities, given that one size does not fit all? Does the initiative avoid prescriptive requirements that hinder the development of innovative administrative solutions? Have all the financial, legal, liability, human resource and administrative implications been taken into account? How can the initiative be improved? And when, in the end, the province makes its final decision, AMCTO disseminates the analysis and information to the municipal staff to whom councillors look for advice.

This is the approach that we have taken for Bill 51, the Planning and Conservation Land Statute Law Amendment Act. Immediately after the bill was introduced in December of this year, AMCTO representatives met with staff from the Ministry of Municipal Affairs and Housing to gain a full understanding of the intent and effect of the proposed legislation. AMCTO representatives then participated in a series of multi-stakeholder consultations that the ministry organized regarding possible regulations for Bill 51. Based on in-depth analysis done by AMCTO's legislative committee, our board of directors made a submission to the ministry in February and developed the expanded submission that I am presenting here today.

AMCTO supports Bill 51 in principle because we believe that the circumscribing of the role of the Ontario Municipal Board in the development application appeal process and giving elected municipal officials new tools to plan the future shape of their communities will improve Ontario's land use planning system. These are the two main thrusts of Bill 51. To be sure, AMCTO has certain concerns about provisions in the bill. These are

the provisions relating to the revision of planning documents; the giving of notice; the requirement of public, open meetings; the record of proceedings at public meetings; evidence admissible at hearings; parties at hearings; and local appeal bodies.

We also have an overarching concern about Bill 51's excessive reliance on regulations. Later in my presentation, I will speak to the specific amendments that AMCTO recommends to the bill.

The role of the OMB: Bill 51 addresses what is a major weakness in the present planning system—the broad scope of the appeal process for local development decisions. Some players have come to see the consideration of applications by municipal councils as simply a prelude to the “real” decision-making at the Ontario Municipal Board. This situation undermines the ability of democratically elected councils to make decisions for their communities. It also contributes to delays in the process and higher costs for all parties: builders, developers, homebuyers and the municipal taxpayer.

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Bill 51 tackles the problem by placing reasonable limits on the Ontario Municipal Board and the appeal process. The bill would require the board to have regard to decisions made by municipal councils. It would restrict the evidence that can be considered at Ontario Municipal Board hearings to that available to the municipality at the time the council made its decision. It would limit the right to appeal decisions and participate at Ontario Municipal Board hearings to individuals who participated in the process at the local level. It would provide wider discretion for dismissal of appeals where substantially the same application is presented in a somewhat different format. Finally, Bill 51 would authorize the establishment of local appeal bodies to deal with minor variances and consent appeals in place of the board.

AMCTO believes that these legislative changes, if approved by the Legislature, will serve to streamline Ontario's development approval process and to facilitate the redeployment of resources now tied up with 1,700 hearings at the board level each year.

We also support the changes that the Ministry of Municipal Affairs and Housing has recommended to the Public Appointments Secretariat relating to the recruitment, tenure, compensation and training of OMB members. These changes include encouraging qualified applicants to become board members by posting position descriptions and providing formal training to members throughout their term. These reforms would complement Bill 51 by enhancing public confidence in the board.

As the committee knows, in addition to rebalancing the roles of the board and the municipal council in the appeal process, Bill 51 would give councils new tools to guide development in their communities. These tools include the ability to regulate minimum as well as maximum height and density, the authority to regulate exterior design of buildings, the authority to set

conditions when approving zoning applications and the ability to prescribe the contents of complete applications.

We recognize that not every municipality will use all of these new powers. We nonetheless welcome their addition to the Planning Act because experience shows that municipalities are better able to respond to changing local priorities and conditions when provincial legislation errs on the side of expanding the repertoire of available tools. One power that we are confident many municipalities will use is the authority to spell out by an official plan policy what constitutes a complete application. This will provide greater certainty for the time frames laid out in the Planning Act.

As I previously mentioned, AMCTO supports Bill 51 in the main but sees parts of the bill that could be improved. Our recommendations for amendment are aimed at ensuring effective administration while respecting the policy intent. With the committee's permission, I would like to go through those amendments.

Section 12 of Bill 51 would require municipalities to revise their official plans every five years and their zoning bylaws within three years of each OP revision. These ambitious time frames will have significant impacts in terms of council time, staff resources and consultant fees. We understand the province's desire that official plans reflect such current initiatives as the provincial policy statement, the greater Golden Horseshoe growth plan and the proposed Clean Water Act. However, we believe that this objective could be met by a one-time requirement that official plans be revised within five years of enactment of Bill 51. Thereafter, the present Planning Act rule that councils must every five years consider the need for an OP revision—but not necessarily undertake unnecessary revisions—would apply. The timing of amendments to zoning bylaws would, in our opinion, be left to local initiative.

Bill 51 would require a municipality to hold an open house before a public meeting to consider any development approval application. The widespread use of open houses shows that they can be an effective means for securing public input early in the development process. The problem is that not all official plan and zoning bylaw changes merit an open house. Taking my municipality as an example, 95% of zoning applications are for the conversion of a simple cottage to a simple residence. Bill 51 states that an open house must be held at least seven days before the public meeting to consider a development application. This will create problems for scheduling open houses where multiple applications are being considered. The blanket rules in Bill 51 will disrupt practices that are working well and will entail unnecessary expense. Municipalities need to maintain flexibility.

AMCTO's preferred solution is that the Planning Act leave it to the municipalities to decide when an open house is appropriate for a particular type of application. Another approach would be for the act to mandate open houses only for comprehensive official plan and zoning bylaw documents. We also recommend that the requirement that open houses occur at least seven days prior to a

public meeting be deleted. This requirement, again, would create problems for scheduling open houses where multiple applications are considered.

AMCTO has a longstanding concern about the prescriptive nature of many notice-related provisions found in provincial legislation affecting municipalities. In its February 2006 submission to the Minister of Municipal Affairs and Housing on the Municipal Act review, AMCTO recommended that the act leave it to municipal councils to adopt policies governing where notice should be provided and the form, manner and timing of those notices. We suggested that this be done by deleting all specific notice provisions from legislation or, alternatively, by enacting a provision that where a specific requirement remains, council has the option of devising an alternative approach, in the absence of which the statutory rule would apply. The bill that the Minister of Municipal Affairs and Housing introduced on June 15, 2006, to amend the Municipal Act, Bill 130, moves in this direction by deleting certain specific notice provisions and strengthening councils' authority to adopt local general notice policies. Bill 51 should, as a minimum, follow the approach taken in Bill 130.

Bill 51 preserves the existing Planning Act provision that allows the province to prescribe by regulation the information that a municipal clerk must transmit to the Ontario Municipal Board in the event of an appeal. We are concerned that this power could be used to require a verbatim transcript of proceedings at public meetings. Such a requirement is unnecessary and could have very significant cost implications. The notice that the province recently gave through the Environmental Registry about the forthcoming Bill 51 regulations suggests that no such requirement is envisioned, at least at this time. The province seems open to the approach that AMCTO has advocated whereby attendees at a public meeting would be informed that only written submissions will form part of the record forwarded to the board except that, where a person makes an oral submission, their name and whether they are for or against the application would be included in the record. We recommend that this policy position be incorporated in the statute and not be left to regulation.

As I previously indicated, AMCTO supports the provisions of the Planning Act that would preclude the admission into evidence at an OMB hearing of information and material not provided to council before it made its decision. This change should encourage applicants and other parties to take the local decision-making process more seriously and thereby reduce the scope and duration of board hearings. The bill provides an exception where the board believes that it was not reasonably possible to provide the information and material prior to council's decision. We believe that this provision is too wide-open. It is in the interests of everyone—the appellant, the municipality, other parties and the board—to have certainty as to what constitutes new information and material. We strongly recommend that the standing committee consider adopting a definition for Bill 51.

Bill 51 introduces the reasonable rule that persons other than public bodies may only appeal a planning decision if they make a submission at the local stage of approval. The bill places a similar limitation on being a party to a hearing on an appeal but allows the OMB to make an exception if the board believes "that there are reasonable grounds to add the person as a party." AMCTO is of the view that this exception would work against the streamlining of the review process, and we recommend that the provision be deleted.

A further AMCTO recommendation relates to section 6 of Bill 51, which authorizes municipalities meeting certain conditions to establish local appeal bodies to handle minor variance and consent appeals. Smaller municipalities like my own will find it difficult to take advantage of this good provision because of the costs involved in establishing and maintaining appeal boards. One solution would be a joint appeal body. This approach is relevant in my county, where, if everyone proceeded to separately establish local boards, there would be nine drawing on the resources of 50,000 people. AMCTO recommends that Bill 51 be amended to authorize the establishment of local appeal bodies on an inter-municipal basis.

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Finally, we are concerned about Bill 51's excessive reliance on laying out key aspects of the reform plan system through regulations. The bill uses the word "prescribed" no fewer than 30 times, which is in addition to the more than 100 instances in the existing Planning Act. Legislation by regulation has two serious consequences. First, it's very difficult for stakeholders to evaluate a bill when half the provisions have not yet been written. We appreciate that the ministry has recently outlined, through the Environmental Registry, the content of some of the planning regulations; however, a great many details remain unknown. Second, the fact that the cabinet or the minister can change the law overnight creates uncertainty for municipal administrators. Imagine the potential for disruption if the authority under which municipalities have developed all their policies and procedures is suddenly changed. For these reasons, we recommend that the standing committee consider replacing regulation-making provisions with substantive provisions wherever possible.

Such are the recommendations of AMCTO, the Association of Municipal Managers, Clerks and Treasurers of Ontario, to the standing committee on general government for adjustments to Bill 51. We believe that these changes would provide the flexibility needed to accommodate the varying circumstances of Ontario's 445 municipalities: large and small, urban and rural, high-growth and low-growth. As I said before, one size does not fit all. Please consider these recommendations for amendments in the context of our overall support for the proposed legislation. AMCTO believes that Bill 51 will address long-standing weaknesses in our land use planning system and that the bill's enactment is in the public interest.

I greatly appreciate the opportunity that you have given us to speak on this matter. I would be pleased to answer any questions the committee might have about our presentation.

The Chair: You've left exactly three minutes, so each party has one minute to ask you a question, and I know they'll be brief. The first one is from Mr. Brownell.

Mr. Brownell: Thank you very much for your presentation. I served on township council and county council back home for a number of years—actually, 14—and there were a number of instances where we had public meetings, open houses for planning issues; not mandated, we just did it. I think we did it because we didn't want to get into trouble and have a lot of confrontation later on. I saw things, happenings in other municipalities where they didn't do that and they did get into trouble.

You've indicated here that open houses should be mandated "for comprehensive official plan and zoning bylaw documents." How should we ensure that early public engagement happens, such as open houses and that type of activity for planning issues?

Ms. Coulthart-Dewey: The Planning Act, as I understand it right now, does allow the municipality to implement alternate measures, as described in their official plans. One of the recommendations is that it be clarified—at least clarified—that the public meeting process, as well as the open house process, be subject to those alternative approaches if the municipality believes that an alternative approach is warranted.

We believe that municipalities are taking advantage of those alternate approaches. They are using the open house alternative as an appropriate mechanism of engaging early, when necessary. The fact that the ability to do that remains in the act, I would suggest that municipalities would continue to do that and use their best judgment. The issue is whether the open house should be mandatory for all applications, and I think that's where it's being suggested that that's overly prescriptive.

The Chair: Mr. Hardeman?

Mr. Hardeman: Thank you very much for the very good presentation based on the administration of the act as opposed to the merits of the planning process.

There are two areas I just quickly want to touch on. I'll put them together and hopefully give you an opportunity to answer. One is your comment that the association "is of the view that this exception would work against the streamlining of the review process," which is allowing someone to go to an OMB hearing if the board thought they had not had equal or adequate opportunity originally. The question is, taking away their total right because they didn't get there in time, is that not working against the process, which is the public's involvement?

The other one is the board, the local appeal body. Your suggestion in small municipalities—and I represent small municipalities—is maybe putting them together and having a joint board. What is your definition of the

difference? How would you define the difference between that joint board and the OMB?

Ms. Coulthart-Dewey: I'll try and address the second question first. I think the recommendation would be that the local appeal body would only deal with minor variances and only deal with the consent appeals. So it's a reduced scope of work to start with, and it would also be a local board, with an opportunity to give a local flavour to those minor decisions, rather than the board being in a larger municipality and not knowing what the local initiatives are.

Can you repeat the first question for me?

Mr. Hardeman: Taking away people's right to appeal.

Ms. Coulthart-Dewey: I don't think it is AMCTO's position that we would be taking away the right of local appeal. All we are encouraging is that the right of local appeal be exercised early on in the process, as the bill would suggest. One of the tenets behind the bill is to front-end the program. I think perhaps an encouragement of the public to get involved early in the process and clearly understanding that it's a necessity to do so would be a far better approach.

The Chair: Thank you. Mr. Prue.

Mr. Prue: Just on the same point, I must state that I agree with the general provision, that if you're not party to an appeal at the beginning, you shouldn't be at the end. But surely, the board would look at exceptional circumstances: a woman having given birth on the day that the thing was and who wants to say something about it; a person who's out of the country due to a death in the family. Surely there must be some provision that people can get into the process after, not just cut them out for all time.

Mr. Frank Nicholson: If I may address that one, we did hear reference earlier today to the culture of the board, the thrust of this legislation to making it an upfront process, all the provisions for people to have that chance up front. So it's just a concern this might undermine the thrust of the whole bill. It's always a balancing act in these situations. Our considered judgment: It would be better without that particular exemption.

The Chair: Thank you very much. Sorry, we've run out of time. That was a very interesting presentation. I think it sparked a lot of discussion.

GREATER TORONTO HOME BUILDERS' ASSOCIATION

The Chair: Our next delegation is the Greater Toronto Home Builders' Association. Welcome. As you get yourselves settled, if you'd like to pour yourselves a glass of water, please do. Make yourselves at home. When you begin, if you could introduce yourselves and the organization you speak for. After you've done that, we'll have 20 minutes. If you leave some time at the end, there'll be an opportunity for all parties to ask you questions.

Mr. Michael Moldenhauer: Good afternoon, Madam Chair and committee members. My name is Michael Moldenhauer. I'm a volunteer with the Greater Toronto Home Builders' Association, as well as chair of its government relations committee. We thank you for the opportunity today to provide comments with respect to the proposed planning and Ontario Municipal Board reform.

Joining me this afternoon is Paula Tenuta. Paula is the director of municipal government relations for the Greater Toronto Home Builders' Association. She's been actively involved in the topic of planning and OMB reform since the discussions began over two years ago. Together, we have worked closely with the Ministry of Municipal Affairs and Housing and have had a series of discussions since this legislation was introduced in December. Along with a copy of our speaking notes today, we have also before you our submission made to the ministry this past March, which lays out in full detail our comments and concerns.

Established in 1921, the Greater Toronto Home Builders' Association is the voice of the residential construction industry in the GTA. We have approximately 1,400 member companies representing a cross-section of the industry. Our industry is the largest employer in the province. Our membership has considerable experience and insight into the OMB's function and processes, and has been a significant contributor to the recent OMB debate.

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I am president of Moldenhauer Developments. We are an infill building company with recent projects in Oakville, Etobicoke, Mississauga and Toronto. This bill, if passed, would impact my day-to-day operations as a company.

Our land use planning system is of key importance, establishing the rules for development and helping determine how our communities grow. We know, as an appeal body that performs a vital function in the development approval process, that a strong OMB is essential. Bill 51 is a significant and complex piece of legislation that, if left in its current form, has the potential to threaten economic stability and housing affordability in Ontario. We're concerned that it proposes new, often onerous, requirements for landowners and proponents of development, and we're of the opinion that what may have been the intent of Bill 51—to reduce OMB workload—won't in fact materialize with the proposed changes.

Recent provincial initiatives—from the new 2005 provincial policy statement, the Oak Ridges Moraine Conservation Act and conservation plan, the Greenbelt Act, the greenbelt plan, the Strong Communities (Planning Amendment) Act, the Places to Grow Act, the growth plan for the greater Golden Horseshoe, the proposed Building Code Act reforms, to this legislation before you—are dramatically reshaping the landscape for the home building and development industry.

With the introduction of Bill 51, our industry is faced with greater complexity and more hurdles to the delivery of cost-effective development. In short, we are very concerned about additional costs and unnecessary delays. These concerns are not unique to developers. All parties involved in the planning approval process will be overburdened. Planning decisions will be delayed and potentially often paralyzed. As currently proposed, the Bill 51 reforms will bring uncertainty to the approvals process and will raise to even higher levels the barriers to entry into the home building and development business.

Housing affordability for consumers is also at stake. Ultimately it is the future homeowners who will bear the brunt of additional costs and delay in the process since they'll be faced with increased house prices. They may also be delivered a product much later than would have been the case without the additional procedural requirements that this legislation will impose.

Many elements of Bill 51 require serious re-examination and revision in order that planning authorities will have the controls that they want without damaging equally important considerations such as job creation, housing affordability and consumer choice. I'll take the next few minutes to go over our main concerns and, where possible, to provide some solutions for your consideration. Our March submission to the ministry presents our ideas in a more comprehensive way, but for this afternoon my remarks will focus mainly on the legislation's provisions related to new evidence, complete applications, urban design, the treatment of employment lands and the proposed timing for the legislation's implementation.

First, hearings *de novo*: Bill 51 proposes that no new evidence, aside from that which was brought before the council, can be presented to the OMB. The most serious problem with this idea is that it violates the fundamental principle that planning decisions should be based on the best information available. Preventing the Ontario Municipal Board from hearing the best information will result in worse planning, not better. Why would we not want the ability to provide the best information to any decision-maker in the planning process?

A second problem is how the applicant is supposed to know what studies and information to file and, on the other side of the coin, how the municipality is supposed to know in advance what the exact study and information requirements are for an application. Every application is to some degree unique, and the public input process under the Planning Act is dynamic. Sometimes the need for a particular study or information does not become apparent until after council makes a decision, such as when a citizen appeals to the OMB and raises a new issue.

A third concern is how municipalities will be able to digest the mountains of material that this requirement is going to generate. This will clearly lead to an increase in costs and resources not only for the proponent but also for the municipalities.

Consider as well what this will do to regular municipal council proceedings. How will a municipal council have the time to review all of the case material being presented, given the other matters that they deal with on a regular basis? The result will undoubtedly be an unnecessary increase in municipal workload.

There is also a fundamental question of procedural justice. Council meetings are not hearings in the same way as an OMB proceeding. There is no opportunity to present a detailed argument, given the typical five-minute limit on deputations. There is no opportunity to refute statements made by opponents, since the proponent normally only has one chance to speak. The OMB must retain the ability to hold independent, thorough hearings where all evidence can be debated in a fair and unbiased manner. The OMB must continue to have access to the best evidence presented by the full range of experts whose advice is at the core of good planning: planners, architects, engineers, ecologists and urban designers.

We therefore recommend that the proposal to have no new evidence presented to the OMB be eliminated and that full hearings *de novo* be maintained. If one of Bill 51's goals is to provide further emphasis on the views of the local municipality, a more appropriate safeguard would be to suggest that during an OMB hearing a motion can be brought forward requesting an adjournment to afford the municipal council an opportunity to consider any new evidence which could have affected its decision.

Bill 51 also includes a provision suggesting that if new material is presented to the OMB which may have affected the council's decision, the entire case may be submitted for re-review back to the municipality. This proposal is highly impractical and will be very expensive for everyone in the process. If this principle is to be retained in Bill 51, the Greater Toronto Home Builders' Association would recommend that new evidence be permitted to be resubmitted to council for review only on motion to the OMB, and only where the OMB decides that the request is reasonable.

Bill 51 also includes provisions that permit public agencies to introduce new information to the OMB, while denying the same right to the applicant, residents or other private interests. Being unjust to all parties involved, GTHBA strongly recommends a change to the proposed legislation to allow the introduction of evidence by all parties and that if public agencies are permitted to introduce new information, the proponents should be given the ability to respond. This is just basic fairness.

Complete application requirements: Closely related to the provisions of new evidence are the complete application requirements introduced in Bill 51. It is obviously the government's intent to ensure that a municipal council has all the necessary information prior to deciding on an application. That is, of course, fair. However, it appears that the underlying concern is the very few applicants who, for whatever reason, have had a disregard for the municipal planning process and have presented bare-bone applications with the intent of

ignoring the municipality and going as quickly as possible to the Ontario Municipal Board.

It's important not to swat this fly with a sledgehammer. This legislation needs to address the problem without overreaching and unnecessarily increasing costs and delay. The Greater Toronto Home Builders' Association would recommend that a prescribed preconsultation process set with minimum information standards and appropriate response times would be a far better alternative than what is currently being proposed.

As written, Bill 51's complete application provisions are vague and would allow municipalities to unreasonably refuse to accept applications. The proposal also has the potential to be used as a delay tactic; municipalities would be enabled to require studies that are not necessary. The current language is so open-ended that it allows a municipal council to require "any other information" that they feel is relevant.

A practical and effective solution would involve a process which puts an emphasis on communication and pre-consultation with municipal staff. The proponent and staff would work together to determine application requirements, and the next step would be for the applicant to submit what they believe to be a complete application. In order to provide a level of certainty for the applicant as well, the appeal clock would start at the point of this application submission. The municipality would then have a prescribed time to inform the applicant if the application is complete or not. If not, the municipality should clearly say why by way of a written notice, or else it would be assumed that the application is complete. If the notice indicates that information is missing, the applicant should have the opportunity to file the missing materials, but if the applicant feels the requirements to be unreasonable, then the applicant should have the opportunity to make motion within a specified period of time to the OMB for a determination of whether the application is complete or not.

In its current form, Bill 51 does not provide the opportunity for an applicant to challenge whether or not the additional material requested is reasonably required. Our recommendation here addresses that and brings a sense of certainty to all those involved in the planning application, review and decision-making process. It will require a clear definition of what constitutes a complete application, which should reflect that a one-size approach does not fit all types of projects.

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Many GTA municipalities already use a co-operative pre-consultation process which recognizes the site-specific requirements of applications. GTHBA members already commit substantial amounts of time and resources with community councils, local planning departments and residents to achieve consensus on development projects. This should be further encouraged by Bill 51.

Design and changes to the site plan process: Another significant element of Bill 51 is the change it contemplates to the site plan control process and the introduction

of additional municipal control over urban design. Proposed amendments to the Planning Act will give more open-ended powers to municipalities to require design features as a condition of planning approval and will, in effect, allow them to regulate elements such as the colour and texture of building materials. The Greater Toronto Home Builders' Association supports good urban design and our members strive for excellence in design and quality standards, but we say that good taste can't be legislated and design should not be dictated.

Regulating the urban design process won't necessarily result in a better product either. The proposed changes will impose an unnecessary degree of architectural control and have the potential to politicize the urban design process and reduce the art of architecture and design to a lowest-common-denominator committee process. There's also the potential for the process to become convoluted as more and more requirements are imposed, clearly leading to unnecessary delays and costs.

We also fear that some approval authorities, in the name of neighbourhood character and good urban design, will mandate unreasonably high standards of building materials, design and building features, which will compromise affordability and be passed on to the consumer as part of a higher house price. This is contrary to provincial goals for housing affordability.

Then there is the element of consumer choice, since the imposed standards may have nothing to do with what the consumer wants. The home-buying experience involves individualizing the appearance of your home. There has to be consideration given to what consumers desire. The marketplace, not council chambers, is where these very personal decisions should be made.

GTHBA recommends that proposed changes to section 41 of the Planning Act dealing with site plan control and urban design be reconsidered as, currently written, they allow for far more control than is necessary or desirable. We would strongly recommend that any provisions related to the control of exterior design be deleted, so that this can remain a matter that is dealt with between the applicant and the municipality as part of the consultation process.

Definition and limiting conversions of employment land: Another matter of concern is Bill 51's provision which would eliminate an applicant's right to appeal to the OMB if a municipality refuses its application for conversion of employment land unless it's part of their four-year review of an official plan. Many GTA cases of residential intensification have taken place on employment lands, and having such a conversion application at the mercy of an OP review is not in the best interests of industry or the municipality.

The redevelopment of brownfields more often than not occurs on areas historically designated for employment. It is unclear how the province intends on reconciling these two vital policy issues. This also serves as an example of how Bill 51, as written, has the potential to frustrate positive intensification and redevelopment applications either contemplated or currently in process.

The Legislature should also keep in mind that some municipalities deliberately do not keep their OPs up to date so that they will maximize their ability to resist or revise development proposals.

The Greater Toronto Home Builders' Association would therefore recommend that the province eliminate Bill 51's provision which states that an application for conversion of employment land, if refused by a municipality, cannot be appealed to the OMB unless it's part of a five-year official plan review. However, if this principle is to remain, GTHBA recommends that a municipality not be granted the option to limit conversions on employment lands until they have completed their five-year comprehensive OP review and that they lose the right to limit conversions if they do not complete one.

GTHBA also recommends that the province review and amend its current definition of "areas of employment" in Bill 51 so that areas of mixed use can in no way be included or caught. As currently written, "mixed use" is included in the definition of employment lands. To avoid being open to municipal abuse, policies concerning areas of municipal employment must be consistent across all provincial planning documents. Mixed-use applications, which can include a residential component, will severely affect, if not paralyze, attempts at increased intensification. Once again, this is an example of a policy that needs to be re-examined since it is clearly counterproductive to provincial policies.

Retroactivity and transition: In relation to the timing of the proposed legislation itself, the GTHBA recommends a phased implementation approach for the proposed changes. Clear transitional policies are needed to deal with all complete applications currently in process, and rules must not be changed midstream.

The proposed amendments include an unfair provision that could make the regulations apply across the board or, on a case-by-case basis, retroactive back to December 12, 2005. In essence, any decisions made by approval authorities and all time and effect invested by all parties involved in an application since that date, and before then, would unjustly become invalid. GTHBA recommends that the province delete this provision related to retroactivity in Bill 51 but instead work with the industry to determine a future effective date.

In conclusion, the GTHBA supports the OMB as an independent and impartial quasi-judicial tribunal that must serve to fulfill the planning goals of the provincial policy statement. With its full scope maintained, it will provide checks and balances outside the political system as the hearing process requires the application of due diligence to important long-term planning decisions.

The GTHBA supports a strong OMB that upholds the principles of responsible and good land use planning. The possibility of an appeal of every type of application encourages higher standards regarding the review, analysis and justification of planning decisions. GTHBA supports an OMB which weighs the impact of the changes proposed on the local environment and also

serves to promote provincial planning initiatives. Maintaining a strong OMB is essential to ensure that the province can implement its stated goals for intensification and growth management.

This must be balanced against the application of good planning principles and properly balanced growth in Ontario. As it stands, Bill 51 proposes problematic and onerous requirements for the homebuilding and development industry. It will result in additional complexity and will overburden all parties involved in the application process. Without reform, we will be faced with uncertainty, lengthened and potentially paralyzed planning applications. Proposed reforms will raise to even higher levels the barriers to entry into the homebuilding and development business.

We again thank you for the opportunity to voice our concerns regarding this extremely important piece of legislation and hope you will consider our amendments to Bill 51 as GTHBA members wish to continue building a prosperous, efficient and sustainable Ontario. Allow the homebuilding and land development industry to continue to assist in serving the provincial goals and interests of affordable housing and increased levels of intensification, and to continue to create dynamic communities.

The Chair: Thank you, Mr. Moldenhauer. You have left exactly 25 seconds.

Mr. Moldenhauer: My apologies.

The Chair: No, it was very thoughtful. Thank you very much. You've obviously put a lot of time into it.

TOWN OF OAKVILLE

The Chair: Our next delegation is the town of Oakville. Welcome, Mayor Mulvale. Thank you for coming here today. We appreciate you making the trek from Oakville. As you settle yourself, I'm sure you know the drill as you've been here once or twice before. If you could state your name and the individual with you, and the organization you speak for, so that Hansard has a record of it. You do have 20 minutes. Should you leave time at the end, we'll be able to ask you questions. I believe we have your presentation here.

Ms. Ann Mulvale: Thank you, Madam Chair. My name, as you have indicated, is Ann Mulvale, the mayor of the town of Oakville, as my former council colleague Kevin Flynn, who we anticipated would be here, would be pleased to attest.

To each of you members of the committee, I'm pleased to introduce my colleague Councillor Cathy Duddeck, for ward 2. Cathy Duddeck serves as the vice-chair of the Oakville Ontario Municipal Board reform working group. In addition, we have two members of the town's planning staff, Allan Ramsay and Diane Childs, with us in the audience.

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Let me commence by noting how pleased the town is that the current McGuinty government has focused on planning reform as a priority issue, noting especially the need for reform of the Ontario Municipal Board. I would

also like to acknowledge the ongoing recognition of the Conservative and NDP members of the need for such reform. We certainly have had conversations with both parties on this in the past. By listening to the public and working together, we can achieve sustainable legislation that supports provincial policies while at the same time protecting the neighbourhoods where we reside.

Madam Chair, you, like myself and other members of this committee, have experience first-hand at the municipal level of the negative impact of the existing Ontario Municipal Board. Let me say again, the need for OMB reform is not a new issue for the municipal order of government. On a personal note, my first encounter with the OMB took place in 1978 as the chair of an Oakville residents' association. The official plan of the then small town of approximately 55,000 people was appealed and resulted in a four-month hearing before the board. Their decision completely changed the cycle of growth that had been decided by the local council after extensive input from the existing residents.

Unfortunately, this experience has been repeated several times over the past 30 years. My colleague Councillor Duddeck, one of six first-term councillors in Oakville, has been extremely disappointed and frustrated over the past three years to see so many council decisions being overturned by the OMB, with dramatic consequences for the area she represents. Given the town of Oakville's considerable experience with the OMB, is it any wonder that the town has been a proponent of planning reform? In fact, MPP Flynn was Halton region's representative on the GTA task force on OMB reform, and I served as the alternate.

Unfortunately, Oakville's experience, like those of many other municipalities, too often involved matters where developers have sought a decision directly from the OMB and have purposely used the Planning Act process to bypass the duly elected municipal council. On many occasions, appeals to local planning applications have been filed prior to the local council having an opportunity to host a public meeting to consider the application. In other instances, appeals to the OMB have been filed prior to the submission of the information necessary to properly evaluate the application. With the residents of Oakville frustrated by the lack of progress on OMB reform in 2005, the town council established an Ontario Municipal Board working group of council to advocate for legislative change to help ensure greater emphasis on the role of municipal decision-making processes in land use planning decisions.

The three key principles for OMB reform identified by the working group and supported by council that they wanted to see addressed in the new legislation were:

(1) developers to submit completed applications to municipalities prior to making appeals to the Ontario Municipal Board;

(2) the OMB to be recognized as an appellate body, not a decision-making body; and

(3) grounds for appeal of the decision made by the democratically elected local government be limited to errors of fact and law.

Subsequently, in August 2005, the Large Urban Mayors' Caucus of Ontario, LUMCO, and many other municipalities throughout our province supported these principles. We are appreciative of the province's acknowledgement of the need for planning and OMB reform. We support many of the initiatives proposed in the bill before you today and firmly believe that planning reforms proposed in Bill 51 are urgently needed and must be proclaimed as soon as possible. The regulations implementing the provisions of the bill are equally important and need careful review to be set in place expeditiously, subject to sufficient municipal engagement. We are aware of the recent posting of the various proposals for new regulations to implement many of the proposed changes outlined in Bill 51 on the Environmental Bill of Rights registry. We will be reviewing those proposals with the intention of submitting comments prior to your October 2 deadline. Further planning and other legislative reform are needed if municipalities are to be effective in making sustainable land use planning and community building decisions in compliance with provincial policies and goals.

Support for proposed OMB reforms: The town of Oakville supports the proposed changes, and in particular the requirements for:

—the opportunity to create local appeal bodies to deal with consent and/or minor variance appeals;

—the requirement for the OMB to have regard for local decisions;

—the clarification and enhancement of what is considered a complete application;

—the introduction of restrictions regarding how new information and materials not available at the time of the municipal council's decision will be heard at an OMB hearing;

—the opportunity for the OMB to ask municipalities to consider any such new information and provide the board with a recommendation in response to the new information;

—the introduction of restrictions on adding new parties to OMB hearings;

—the establishment of qualifications for members of local appeal bodies, i.e., demonstrated understanding of the provincial land use planning process, the Planning Act and local planning and development matters;

—the addition of a provision to allow the OMB to dismiss an appeal without a hearing if it determines the appellant has persistently and without reasonable grounds commenced an appeal. This abuse-of-process provision would be used in cases where the current proposal is similar to or the same as proposals that have been previously adjudicated;

—the reintroduction of the authority for the minister to declare a provincial interest in matters involving appeals of minister's zoning orders. In that case, the provincial

cabinet would make the determination, rather than the OMB.

What's missing in the OMB reforms? While much has been achieved, there is still a great deal to be done. I am hopeful that, as many of the committee members have extensive municipal experience, you are undoubtedly aware that at the local level we are responsible for implementing all the changes that are proposed and want to make sure that the right processes are in place. With the introduction of local appeal bodies, it may be appropriate to expand their mandate to include appeals of site plans, plans of subdivision and other planning matters of a purely local nature. This could also include zoning matters where the application conforms to an approved official plan.

Another approach would be to permit appeals to be heard by the OMB only on matters that are declared provincial interests. Provincial interests could be defined as those matters set out in the provincial policy statement or as declared by the province. All other appeals, regardless of the type of application, would be heard by the local appeal body.

A further approach would be to add provisions to the bill to limit the scope of OMB hearings. Full hearings or *de novo* hearings should only be held if:

- there is a declared provincial interest in a matter;
- there has been an error in the decision-making process; or
- there has not been a municipal decision rendered.

The scope of all other appeals should be focused on specific aspects of the planning application. This would require a process whereby appellants must declare the specific nature of their appeals. Then evidence before the OMB would be limited to the declared issue, narrowing the scope.

With respect to completed applications, although Bill 51 contains new requirements for official plan, zoning, subdivision and consent matters, the bill does not allow municipalities to require complete applications for site plan and minor variance applications. While the processing requirements for these latter matters are usually less than other types of applications, certain minimum or baseline information is generally required.

For example, a recent minor variance application in the town sought approval for a waste transfer and processing station. The application was submitted without noise, traffic or any other technical studies. The matter was eventually appealed to the OMB and approved by the OMB without the requirement or consideration of any technical studies.

Further, the requirement for the OMB to "have regard" for a municipal decision is laudable but needs to go further. There is the potential for ambiguity as to what this really means. In circumstances where the OMB is making a decision contrary to the decision of the municipal council, there should be a requirement for the board to clearly demonstrate how it gave consideration to the municipal council's decision. It cannot simply be

stated that the board preferred the evidence of one party over the position of the municipality.

Our final concern with the proposed OMB reforms outlined in Bill 51 is how new information is considered at an OMB hearing. Although the bill provides the opportunity for the OMB to ask municipalities to consider any new information that may become available during a hearing and provide it with a recommendation arising from the new information, there must be adequate time afforded to the municipality, including its staff, to review and evaluate the new information and formulate an informed response.

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Other planning reforms: Although much of the town of Oakville's focus has been on OMB reform, we would also like to make a few additional comments with respect to other changes that you are proposing for planning.

The town of Oakville supports the proposed changes, and in particular the requirements for:

- requiring applicants to attend pre-consultation meetings prior to submitting applications;
- prohibiting appeals on official plan and zoning applications that seek to reduce the amount of land designated for employment use;
- requiring planning decisions to be based on the most up-to-date provincial policy statement and provincial plans in effect regardless of the time the application was filed;
- maintaining up-to-date official plan and zoning bylaws;
- allowing municipalities to apply conditions to the approval of zoning amendments; and, finally,
- permitting municipalities to regulate the external design of buildings through expanded site plan control.

While we appreciate the efforts of the province to better the planning process with the proposals in Bill 51, it is our opinion that further improvements are required. The town of Oakville requests consideration of the following additional planning reforms.

At the town of Oakville we believe we are leaders in ensuring the public and all stakeholders are fully engaged in local planning decision-making. For many years, our procedure has been that our planning staff host public information meetings early in the planning process. These meetings are in addition to any of the statutory public meetings required by the Planning Act. Bill 51 introduces the requirement for a public open house to be held no later than seven days prior to the statutory public meeting. While we support the concept of having such a meeting to allow the public to review and ask questions, we believe there may be circumstances where these additional meetings may not be warranted and could in fact delay the process unnecessarily. We would ask that the provisions of Bill 51 be permissive so as to provide municipalities greater flexibility or discretion for holding a public open house.

As already noted, we support the proposals in Bill 51 that planning decisions be consistent with provincial policy statements and conform with applicable provincial

plans in effect at the time of the decision, not those in place at the time of the application. While we support this change, given the various states of approval for planning matters, there needs to be further direction in the bill to address circumstances when some planning approvals have been granted under one set of provincial policies or plans and other, related planning approvals are being sought under current policies and plans.

Under the bill, the basis for updating official plans has been shifted from local determination of outstanding issues and circumstances to the need to conform with new provincial policy. While we accept that regular and timely reviews are necessary to keep up with the evolving provincial policy, the town believes the focus of the official plan review process should address a wider range of emerging community issues.

Further, we request provisions be included in the bill that would provide local municipalities the authority to approve part lot control bylaws for any plan of subdivision, regardless of the original approval authority of the subdivision. Currently, the Planning Act limits the local municipality's authority to grant part lot control exemptions to subdivisions where it is the approval authority.

The bill adds "sustainable development" as a matter of provincial interest. While we support this initiative, there needs to be some guidance around what constitutes sustainable development so that the municipalities can fairly evaluate whether a particular development is in conformity.

Finally, the bill needs to be amended to delete the proposal exempting energy undertakings such as the siting of power generating facilities from the requirements of the Planning Act. These new facilities need to go through the appropriate public process to resolve any conflicts. Local councils are all too aware of the issues and concerns of the community regarding the impact of these new facilities.

To conclude, I again want to congratulate the McGuinty government on recognizing the need for OMB and planning reform. These changes are clearly long overdue and need to be acted upon immediately in order that local councils, like the town of Oakville's, can properly serve their constituents. Although this is a great first step, more needs to be done to ensure that there is appropriate legislation in place to create healthy, sustainable and desirable communities.

The town of Oakville looks forward to continuing to work with the province and opposition parties to address these concerns and to ensure that Bill 51 moves toward final reading expeditiously. Simply put, every day prior to the passing of Bill 51, new applications can be and are being filed under the present flawed legislation. This results in the continuation of an inadequate and unnecessarily expensive process which frustrates the residents we all strive to serve.

Madam Chair, copies of this presentation have been made available, as you know, to each member of the panel as well as to Minister Gerretsen and his staff. For

the committee's reference, we have also appended the town's previous submission to Minister Gerretsen, which was dated February 23, 2006. We thank you again for your attention and for the opportunity to appear before you this afternoon.

The Chair: Mayor Mulvale, you've left about a minute and a half for each party, beginning with Mr. Hardeman.

Mr. Hardeman: Madam Mayor, I was just wondering: On page 7, the issue of the OMB and their not taking any new information—if they do get new information at the hearing, they must refer it back to local council for a decision. The act is quite clear that no new information will be allowed. Why would we be talking about referring that to council?

Ms. Mulvale: We are merely going on the record that should the bill not accommodate that and allow new information, it must go back. One of the things we're trying to work out with the industry, to agree with the province on a definition of a completed application, is to negate that. We don't think anybody should go forward and have someone at a late date say, "Oh, and by the way, we have this new information," and not be given adequate time to comment. So we're hedging our bets in our submission to you today to make sure that wherever this bill ends up, if the wisdom of the day in Queen's Park should be that new information will be received, there clearly be a complementary recognition of appropriate referral time back to the staff and the municipal councils to see if it influences their decision.

We, in short, are anxious to see the system work better for all parties.

Mr. Prue: A question from your statement on page 6. You write, "A further approach would be to add provisions to the bill to limit the scope of OMB hearings. Full hearings or de novo hearings should only be heard after the first one if:

"—there is a declared provincial interest in a matter."

Would this include something like socially assisted housing? We know that many town councils and city councils have a lot of difficulty with that and would quite often vote it down. We know that the OMB is probably the only avenue to get these passed. Would you include that kind of a provision, or would you think that's something the municipality should look at?

Ms. Mulvale: We clearly said earlier our three principles that we were able to get support on from LUMCO and from many other municipalities throughout the province last year—that the municipality must be in compliance. If they're not in compliance with provincial policies, and that would obviously include social housing issues—I can tell you that I have chaired, and I know you as a former mayor have chaired similar meetings in that capacity, quite lively meetings. We have made it very clear to our constituents that we're looking at housing planning matters, not tenure or who resides in those buildings. I have also taken some heat and lost some votes pointing out that many people who qualify for social housing would be nursing assistants or child care

workers. We as constituents are very anxious to have those people take care of our children and loved ones at very vulnerable times, so to be opposed to them living in our neighbourhoods would seem to me to be counterproductive.

That's a personal comment. The comment from the town is that our three principles speak to that issue: If they're not in conformity with the provincial policies, which would include social housing, the OMB is a vehicle to go to.

Mr. Lalonde: Thank you very much for your presentation. On the top of page 10, you indicate that, "We request provision be included in the bill that would provide local municipalities with the authority to approve part lot control bylaws." Why would you say that you would like to have this provision?

Ms. Mulvale: We just think it expedites the issue. But there are items that are delayed because at the moment, we can only do it if we passed it. So we're just saying it expedites the process. It's another thing that we can do locally: local decision-making rather than going to an OMB hearing.

Mr. Lalonde: Thank you.

The Chair: Thank you, Mayor Mulvale, for coming today.

Ms. Mulvale: Thank you for your time.

1520

SHARON HOWARTH

The Chair: Our next delegation is Sharon Howarth. Welcome. Do you have a presentation that you want us to have?

Ms. Sharon Howarth: I don't. It's just written out.

The Chair: All right. Welcome. You have 20 minutes, and if you've got yourself settled, would you say your name for Hansard so we have a record of that. You're an individual? You're not speaking for an organization? You'll have 20 minutes. Should you leave time at the end, there will be an opportunity for questions.

Ms. Howarth: Thank you so much. My name is Sharon Howarth and I'm a resident of Toronto.

Bill 51 has many positive and long-overdue changes that are being contemplated with regard to the OMB and the restoration of greater municipal control and influence over local planning and energy conservation initiatives.

All government jobs all the way up to the MPPs and the Premier exist because residents work and pay taxes, which pay all salaries. Governments are, in reality, employees of the residents and their *raison d'être* is to make decisions that benefit the majority of the residents.

When I have to make a decision, I have two avenues for seeking the necessary advice to make an informed decision. I will go to those who are in the field of the decision I need to make, and I will also go to neighbours. I stay aware that those in the field of work—there's a bias there—must speak for their employers, otherwise they will lose their jobs. So I don't necessarily feel that I

am their first interest. When I go to a neighbour, I know the reason for the decision is home. So that, to me, is the logical place. That's where I'll make my final decision: neighbours, home.

There needs to be a reminder that the government mandate is to make decisions that do benefit the majority. What the environment means—that word is used a lot—is drinkable water and breathable air. The economy is owned by the environment, and people are jobs and the economy. Without the drinkable water and the breathable air, there are no people and there's no government.

Energy generation is a provincial matter. Bill 51, in section 23, is a proposed law that would exempt private sector energy generation projects from Planning Act approval and a potential lack of a credible appeal process. Residents retaining the right to go to the OMB with concerns over a minor extension to a neighbour's house yet having virtually no ability to address local land use planning issues which arise in the context of a private sector developer's plan to install power generation facilities within a municipality is simply not logical.

I have followed the experiences of resident Richard Johnson from York region, who participated in the Markham Hydro Task Force as a representative of a grassroots, neighbours' community group called Stop Transmission Lines Over People. His primary interest is home, the same as mine. I know all of us, when we go home at night, have that same home interest, and this is actually part of what Richard deputed this morning. So I had read it.

Concerned citizens in here have spent—and this, I see myself in my neighbourhood, could happen down the road. This is why I've been following quite a bit of this. Concerned citizens spent hundreds of thousands and years of recreational time to address what was happening in their neighbourhood. The greatest obstacle was Hydro One and the local hydro distribution companies. Hydro One proposed solutions that were not recommended by the OPA. They did not see it as their mandate to extensively explore the impact of potential generation or conservation alternatives. They strictly looked at transmission solutions and ignored the public concerns. They adamantly pushed for a solution based primarily on technical and financial merit. They employed lawyers to contest points against the community group and community members—residents. They dismissed research that was brought up not only in York region but also in recent power supply cases in Mississauga, Aurora, Newmarket, King township, Toronto, where thousands of people have expressed serious concerns related to those proposed implementations of power generation and transmission solutions.

The OPA process mandate should be revised; applicable environmental impacts should be explored much earlier in the planning process. It is crucial that the public and municipalities stay engaged. Please ensure that the resulting bill will give more weight to environmental concerns—our breathable air, our drinkable water; it's simple, it's what we need—and ensure that

public and municipal input will be permitted to influence power supply planning decisions.

I know you're all good, caring people and I know you'll make the right decision and you're listening. Thank you so much for this opportunity.

The Chair: Thank you. You've left about four minutes for each party to ask you a question. Mr. Prue.

Mr. Prue: You zeroed right in on section 23; we've had a lot of discussion on that today. Do you believe that municipalities should have the right to say that they don't want particular types of power located within their municipality? I'll start first with nuclear. Do you think a town should say, "I don't want a nuclear site located within the scope of my municipality"?

Ms. Howarth: I think that if there's a proper process in place for people to be listened to—a neighbour of mine came up with an idea of lobbying. Lobbying needs to be open to those in the private sector, but also to citizens, because this is what it's all about. It's all about people and a process where they could listen to each other. There has to be that process where it all comes out, we all hear the same information at once, and then we can make an informed decision on that. I did a process with the Don River and I found that it's very much controlled; I didn't find it an open process. Whether it's generation of power or whether it's other issues, the public needs to be more involved and at a time when they can come, and again, this lobbying could be every two weeks. That's when the politicians and the people and the private sector would all be listening to the same thing at the same time and have that opportunity to listen. It could be in the evening. Again, this whole process is about people. These things take place in the middle of the day when they're supposed to be working to make money to pay the taxes. An open process is what I'm—

Mr. Prue: Okay, but section 23 quite clearly takes the municipality out of the—that's the municipal politicians, the elected people—

Ms. Howarth: I don't think it can be done.

Mr. Prue: —and substitutes in some cases the environmental assessment bureaucrats. Do you think that is adequate public consultation, or do you want to deal with your elected officials?

1530

Ms. Howarth: I think it has to be closer to home. There has to be more decision-making closer to home. Now, whether it's this one in particular—just generally, there has to be more decision closer to home, closer to the people so they feel like they're being listened to.

Mr. Prue: Thank you.

Mr. Sergio: Ms. Howarth, I have to say that you are a very consistent presenter. You've been here before and I appreciate the times that you come and express your views on different issues, especially those with respect to safe drinking water or clean air. I'm sure you've been following some of the things the government has been doing with respect to both of those very important issues. I'm pleased to see that you seem to be an environmentalist.

Ms. Howarth: I'm a human.

Mr. Sergio: Yes, okay.

Ms. Howarth: I think that environmental—

Mr. Sergio: But clean air and safe drinking water—I think those are two very important issues.

Ms. Howarth: The basics.

Mr. Sergio: I only have one question for you—I want to thank you before I forget for coming and making a presentation to us—with respect to energy as well. We just went through a couple of days of very, very hot weather. We need on a regular basis more energy; we need to generate new energy, stuff like that. What would you like to see the province, in conjunction not only with municipalities in general but with the city of Toronto, do in order to sustain, improve, produce more energy? And what kind of mechanism would you like to see on the part of cities or municipalities?

Ms. Howarth: Thank you so much for that question. When it comes to energy, we need—neighbours know—conservation. Conservation is such a big one. The reason I hesitated is that I can go to neighbours' homes—they work in the big buildings downtown, and it is so cold that on those days like yesterday and the day before, when it was so hot, there are heaters on. Women dress for the weather. There are those who can't afford air conditioning at home or who are trying to be so careful about what they do at home, and they keep their air conditioners off. They go downtown and, leaving the heat of their homes, they have to carry sweaters; many of them get downtown and there are heaters on. I have heard that from OPA people on a panel that Smitherman had, and I can give you the addresses of neighbours who will state the same thing: Those heaters are on.

So conservation; the government has to help us there, and they can win. "No, no, the people won't accept the green bin and all this recycling and that." They do, with help. They've got to work. As you're here from 9 to 5 and probably even later, so are they. They're at their work trying to make money to live but also to pay the taxes. They need the support. That's why they want governments to support them. I know you care. Look, you're listening. Of course you care, and you want to make the right decisions. So conservation and the green energies—people feel so good about the green energies.

Mr. Sergio: Thank you very much.

Mr. Hardeman: Thank you very much for the presentation. Obviously your presentation was all to section 23, which is the exemption that the bill gives to the siting of energy facilities and energy infrastructure in municipalities. We've heard a lot of presentations on that issue from different people coming before the committee, including a lot of mayors and municipal people who believe that they should have input into the siting of infrastructure for energy.

This morning we had a presentation from the mayor of Burlington. When asked by the member from the New Democratic Party about municipal involvement, he said it would be at their own folly if the provincial government didn't include municipalities in planning for energy

infrastructure. Yet we find section 23 is just that. It takes away the ability of the municipality to be involved in the planning for municipal infrastructure. The whole bill is based on—and I'm sure you're aware of that, as you've read it—setting up provincial policies as to how they expect the development to be done in the province of Ontario, and then the implementation of the provincial policies is going to be done locally.

Could you maybe help me with why it is you would think the province took energy out and exempted them from any of the planning requirements, when they've included that for everything else? Why could they not have set up a—in your opinion, could they set up a policy that says, “You cannot refuse the application based on these principles, but you can look at it from a planning principle, as to where this infrastructure should go,” recognizing that all development at some point in time is going to be dependent on that infrastructure that is being exempted from the planning process? I wonder if you could help me out with that.

Ms. Howarth: Well, I would say the government can do whatever it wishes. If they want to stay connected to the people, they need to bring the decision-making down closer to that level. It's just very simple.

We all need to be with various ecosocial scales, and that's what makes life exciting, interesting. We all need it. We can't be in that homogeneous setting. Something's missing. So if the provincial government gives the decision-making back down to a municipal level, closer to the people, we will have happier people; we can't help it. “Oh, I really have power in decision-making. They really want to listen to me.” You'll have a much happier city, a much happier province. And it's all people.

Mr. Hardeman: Thank you very much.

The Chair: Thank you very much for being here.

TINY'S RESIDENTS WORKING TOGETHER RATEPAYERS ASSOCIATION

The Chair: Our next delegation is Mr. Lawrence. Welcome.

Committee, you have on your agenda that WindWatch Conservation is speaking. I believe WindWatch has given up their place to Tiny's Residents Working Together, and Mr. Lawrence is the speaker on that subject. I gather WindWatch will be forwarding us a written submission later on.

Mr. George Lawrence: That is correct.

The Chair: Great. Welcome. You have 20 minutes. If you could say your name and the organization you speak for for Hansard so they get a record of that. Once you've done that introduction, you'll have 20 minutes. If you leave time, there will be an opportunity for us to ask questions.

Mr. Lawrence: Thank you. My name is George Lawrence. I'm a resident of Tiny township. I am the chair of the Tiny's Residents Working Together Ratepayers Association. I am the editor of the Tiny Ties

community newspaper. I also sit on one of the hospital boards.

I thank you for hearing me today, members. Frank Entwisle was originally scheduled to address this issue as the president of WindWatch. That's a growing organization coming across the province now. Unfortunately, due to short notice and a conflicting travelling schedule, I have been delegated to address this issue. I'm not as well versed as Frank, but I'm going to do my best here today. A full, comprehensive vision will be forwarded to your committee by WindWatch.

To date, our ratepayers' association, through our newspaper Tiny Ties and also through the holding of special information day meetings—we have held three of them throughout the community; Tiny township is a very large community in Georgian Bay—has been in contact with thousands of residents in Simcoe county. It could be fairly stated that 80% to 90% are strongly opposed to Bill 51, section 23.

What is Bill 51, section 23, and what will be its effects?

Bill 51, section 23, is a draft piece of legislation that was introduced to the Ontario Legislature by the McGuinty government on December 12, 2005. If it becomes law, section 23 of Bill 51 will allow the McGuinty cabinet to exempt from local municipal control prescribed private sector energy generation projects. In many cases, there would not be any need for an environmental assessment. All that would be required would be an environmental screening report followed by a mere 30-day public comment period.

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What is Tiny's Residents Working Together's position regarding section 23 of Bill 51? TRWT strongly opposes section 23 of Bill 51. The siting and permitting of private sector power generation facilities should remain subject to local municipal control.

The background: Tiny's Residents Working Together will argue in favour of two important principles. First, the power generation development issue should be dealt with through a responsible, informed decision-making process. Second, the power generation development issue should be subject to local municipal control. Section 23 of Bill 51 offends both of these principles.

What are the specific reasons for TRWT's opposition to section 23 of Bill 51? There are a number of reasons we oppose the current form of section 23 of Bill 51. They include the following:

(1) It is fundamentally unfair. Affected residents would virtually have no ability to address local land planning issues which arise in the context of a private sector developer's plan to install prescribed power generation facilities within a municipality, with the resulting adverse consequences for the local community. Meanwhile, other residents will retain their right to go to the OMB with concerns about, for example, a minor extension to a neighbour's house.

(2) It is not consistent with worldwide practice. Other jurisdictions with extensive experience with new forms

of power development—e.g. Germany, Denmark and Holland—have developed and implemented careful and informed planning policies and procedures regarding the installation of those power generation facilities. In its haste to enjoy the political benefits of encouraging new power development, the McGuinty government is ignoring the examples of these other, more experienced jurisdictions at the expense of Ontario municipalities and their residents.

(3) A mere environmental screening will not address all relevant issues. As recommended by the advisory panel appointed by the McGuinty government in 2004 regarding required environmental assessment reform, “an environmental assessment program should have a broad scope that encompasses pollution control, resource management and land use planning considerations.” Land use planning issues are best dealt with through control at the local municipal level. The proponent-driven nature of the environmental assessment screening process, a process which the Ministry of the Environment has recognized is in need of reform, provides little to no assurance that credible and legitimate local land use planning issues—e.g. density, setbacks, maximum height, cumulative effects of multiple projects etc.—will be adequately addressed.

(4) The required regulatory framework is already in place. The provincial policy statement already provides that renewable energy systems shall be permitted in rural areas, and the Planning Act was recently amended to require that local municipal council decisions shall be consistent with the provincial policy statement. Local municipal councils are in the best position to determine how best to provide for the implementation of renewable energy systems within any particular local community in a manner consistent with the provincial policy statement.

(5) Bill 51 facilitates power generation while ignoring key energy conservation. We question the focus of the McGuinty government’s policy on energy generation, at the expense of the residents, rather than on energy conservation. The government is aggressively pursuing generation initiatives while making virtually no demonstrable progress regarding conservation.

(6) The alleged benefits for new forms of power generation need to be proven before the adverse consequences are forced upon municipalities. For example, despite the apparent attraction of the wind power concept, there are real and substantial concerns about the true practical benefits. The need for backup generation, such as when wind is not blowing, is well recognized. The high cost of wind power is well documented. The fact that the worst air quality days, the hot, hazy days of summer, are days when the wind doesn’t blow means that the alleged ability of wind power to address air quality concerns is subject to serious questions. These issues need to be the subject of informed, responsible debate before the adverse consequences of wind power generation facilities are forced upon rural residents and their communities.

(7) The issues presented by power generation projects vary from municipality to municipality. What is right for one municipality may not be right for another. Even within a single municipality, a proposed power generation development will present different issues within different communities. It is only through local control over the planning process that the relevant issues can be dealt with appropriately and democratically.

I would like to also bring to your attention the fact that many municipalities have written rejecting section 23 of Bill 51. Tiny township, in a letter dated February 20, 2006, stated, “The municipality believes that the planning process under the Planning Act most appropriately provides for full local input and implementation where appropriate for land uses that relate to energy.”

In closing, I would like to thank you for your time and ask that each and every one consider the democratic process that has been used as a guideline in fairness across this great province for generations.

The Chair: Thank you. You’ve left about three minutes for each party to ask you questions. Our first speaker will be Mr. Jean-Marc Lalonde.

Mr. Lalonde: Thank you very much for your presentation. Since we’ve been sitting here this morning, I’ve been hearing about that section 23 that concerns a lot of people. Going back to the Environmental Assessment Act and also to the document that you presented to us, they don’t get a freebie. Either they go through the planning process or they go through the environmental process. At the present time, if it is under two megawatts, all they have to go through is the planning process. If it is over two megawatts, then they have to go through the full Environmental Assessment Act. Were you aware of this?

Mr. Lawrence: I’m aware of it, but I understand that it’s a limited hearing compared to if the municipalities were involved, that we all could be a part of.

Mr. Lalonde: We’re just trying to eliminate a process. It’s either one. What the people are always referring to, it seems that they would like the municipality to have to go through the two processes. This way, they don’t have to; it’s either one of the two. Probably somebody from the ministry could clarify this point, Madam Chair, because we’ve been hearing about this since this morning. Looking at the bill here, it’s very clear.

The Chair: I’m sorry, Mr. Lalonde, we don’t have the time to do that, but I think what we can do is ask our research staff to get back so you can get some additional information to help you with clause-by-clause.

Mr. Lalonde: Thank you.

The Chair: Ms. MacLeod?

Ms. MacLeod: Thank you very much, sir. We really appreciated your very well thought out deputation. Just to follow up with MPP Lalonde, section 23 has been a big issue today, and certainly my colleagues in the Conservative Party are very outspoken on this. We are very concerned that large energy projects are just going to go through, usurping local authority and eliminating a public process. I’m just wondering, with respect to what Tiny

township has said—you're speaking for the residents' association, not for the township?

Mr. Lawrence: The township has spoken through a letter to the government, and I am speaking on behalf of the residents who have written numerous letters to the community newspaper. We've held general meetings. We had general information days where we rented halls and sound equipment and we had standing-room-only crowds to participate.

Ms. MacLeod: Good for you. Now, for clarity's sake, I understand that Tiny township has said, "The municipality believes that the planning process under the Planning Act most appropriately provides for full local input and implementation where appropriate for land uses that relate to energy." So you are advocating this as well, just for clarity purposes?

Mr. Lawrence: Yes, I am.

Ms. MacLeod: Excellent.

Mr. Lawrence: To answer your question, Tiny township is a resort area on Georgian Bay. We are definitely not anti alternative energy. One of the pages in our last newspaper that was put out here is "A Truly Green Energy Future for Tiny." There are about six different options in that paper to educate our community on what options may be available, because we want to be part of the energy program.

1550

We have a two-bag limit in Tiny township for pickup. We are not in the area of million-dollar homes. Where people come up from Toronto to enjoy the scenery, the trees and the landscaping, there are historical homes in the area that have gone from generation to generation, and they would be more than willing to accept alternative power sources. Windmills are not conducive to that particular landscape. That's why we say municipality by municipality should have—

Ms. MacLeod: Mr. Lawrence, just to jump a little bit ahead, in your opinion, would you agree that section 23 is rather inconsistent with the rest of Bill 51 insofar as this is taking away local control and in other parts of the bill we're giving more control?

Mr. Lawrence: This was a great concern of mine because in one respect—and all due respect to all members of government; I don't want to pick on one side or another, and it might have come out that way—

Mr. Prue: I think they're used to it.

Ms. MacLeod: They've missed us for a few months, so—

Mr. Lawrence: No, no. This is not to pick on the government, with all due respect. We need help from everybody. And if I had ever had an answer that I wish I could express it would be that the McGuinty government would take more direction in respect to conservation and perhaps we wouldn't have to have these wind turbines. Our member of Parliament, Garfield Dunlop from Simcoe North, stood up in the Legislature a while back and showed the Melancthon ratings, for the wind turbines in Shelburne. There is a rating for those wind turbines up here that the energy minister has given. But when you

follow the asterisks at the bottom it says those wind turbines are producing 10% of what is listed by the government. And this is by your own people, the Independent Electricity System Operator. I believe that everybody in every party here, if they were sold a furnace or an air conditioner and the seller said to you, "You've got a dependability of 10%," would not buy this.

Ms. MacLeod: Mr. Lawrence, I just want you to know that Garfield has been a very big opponent of section 23 and he has spoken out on that on behalf of your constituency. I just wanted to let you know that.

Mr. Prue: I just want to be clear. The biggest concern the people in Tiny township have is the proliferation of windmills. Have I got that right?

Mr. Lawrence: As opposed to what?

Mr. Prue: As opposed to other forms of alternative energy—solar, you know.

Mr. Lawrence: We are acceptable to all alternative forms of energy. Windmills are not conducive to the windswept pine trees of the Georgian Bay landscape. When you educate people fairly, like we have tried to do, and you find out the production that comes out of the wind turbines being subsidized—the hydro rates are still going up. They're producing 10%, and this is verified by Europe. We really want to look at some other alternative ways of energy. We're not turning a blind eye to that. We want to look at some ways.

Mr. Sergio: So are we.

Mr. Lawrence: Great.

Mr. Prue: In this past week, I heard an energy expert from the United States speaking, and he said it in terms of what I've heard in Ontario before: The best kilowatt you could produce is the one you don't use. Is that your position, that the government should be looking to conserve energy before wasting millions or billions of dollars on any form of energy?

Mr. Lawrence: Without picking on a particular government, yes, sir. That is what I tried to say in part of my statement here. We have a lot of cottagers and people who live in Toronto, Kitchener and surrounding areas who come up to Tiny and their cottages in the resort area. When they come up they are shocked to find out that we have a two-bag garbage limit. They come down to the city and they say, "Oh, we put six bags out."

We had an article in the newspaper recently about people putting sofas on the side of the road, just dumping them, and appliances that are broken down in the cottages. Somebody called in from a built-up area—I believe it was Aurora or Newmarket—and said, "Well, why don't they do what we do and call ahead of time each week and have the heavy garbage pickup come along and take that sofa rather than throw it in a ditch?" We only have one garbage pickup each year, and if you don't get it then, you don't get it. That's why they throw it in the ditch. For us to learn through the television that somebody in a built-up area can call and say, "At the end of this week my stove or my fridge will be out at the end of the driveway"—you just have to call, and it's 52 weeks a year.

Mr. Lalonde: It costs you \$10 to do that.

Mr. Lawrence: Does it? I wasn't aware of that.

The Chair: Thank you, Mr. Lawrence. We appreciate you being here today. You've been a great advocate for Tiny.

MICHAEL WALKER

CLIFF JENKINS

The Chair: Our next delegation, and our last for today, is Mr. Michael Walker.

Mr. Michael Walker: I'm going to share my time with my colleague Councillor Cliff Jenkins.

The Chair: You can bring whoever you want up. I know you know the drill; you've been here before. Welcome back. We thank you for coming today. If you're both going to speak, we just need you to identify yourself, the individual who will be speaking with you and the organization you speak for. After you've done that, you will have 20 minutes. Should you leave a little bit of time at the end, we'll be able to ask you questions about your presentation, which we have in front of us.

Mr. Walker: Thank you. My name is Michael Walker. I'm a city councillor for going on a quarter of a century, if the electorate is good enough to return me. I represent St. Paul's, which is in the geographic centre of the new city of Toronto.

Mr. Cliff Jenkins: My name is Cliff Jenkins. I'm city councillor for ward 25, which is the north part of Don Valley West and is essentially bounded by Yonge Street, the 401, Don Mills and Eglinton, roughly.

Mr. Walker: The citizens whom I represent in St. Paul's are all too familiar with the Ontario Municipal Board and the power its unelected members hold over this city's well-being. Many residents wish to see the OMB abolished, some want major reform, but all want more protection for their neighbourhood than Bill 51 presently offers.

Over the past years, I have worked with the resident umbrella group FoNTRA, Federation of North Toronto Residents' Associations, meeting with various MPPs here at Queen's Park and their staff to convey the urgency for reform needed to protect our neighbourhoods from irresponsible overdevelopment. This legislation does not put in place a process by which the citizen is properly respected. This legislation does not strike the right balance between the rights of the citizen and the rights of the provincial government.

If Bill 51 is passed as is, the Ontario Municipal Board will still be able to make subjective judgments on proposed developments over the heads of local elected officials and the residents affected by a proposed development in their neighbourhood. The Ontario Municipal Board will still be able to force their own prejudices and interests upon Toronto in the name of the public interest. Last time I checked, the public interest is defined by what the public is interested in and by what they

value, not by a ruling from above driven by a process which defers to developers.

In the words of the Ontario Municipal Board, here's a common frustrating example of an OMB decision which overturned a city decision:

"The proposed development is not out of character with its neighbourhood.... Such a proposal successfully balances the goal of intensification with the goal of protecting a stable neighbourhood.... Finally, the board finds that well-intentioned neighbours who fear change in their neighbourhoods reflect private interests, not the public interest. They have a right to bring their concerns to the board, as does the ward councillor, but the board must not mistake private interest or public opinion as enunciated by an elected official for the public interest."

This is the level of insult and contempt our citizens receive from the Ontario Municipal Board and its current process.

What is the public interest but the collective interest of the governed? How can an unelected board so brazenly brush aside the will of the citizens and a local elected official? How is the OMB's decision accountable to anyone?

Further, in the words of a north Toronto ratepayer past president, "Clearly it is the Ontario Municipal Board's view that together the taxpaying residents of our community and duly elected representatives cannot be trusted to know what is best for our neighbourhood. Indeed, they have once again demonstrated that [our area] requires the sage offerings of an appointed board to make the appropriate decision for our neighbourhood. This is yet another galling example of how the OMB totally disregards community opinion and that of our elected officials."

1600

Your committee needs to hear this, because this is just one example. Your committee needs to understand how people are being treated and how they feel about the Ontario Municipal Board.

As in that quote, residents all over the city are fed up with the Ontario Municipal Board usurping the city's planning decisions. Bill 51 needs to be amended to overcome the many areas of concern of the citizens I represent. I want to make nine suggestions for change to your committee:

(1) The OMB should be an advisory body only.

(2) Ontario Municipal Board decisions need to not only "have regard to" municipal council decisions, but should be "consistent with" municipal council decisions supported by the official plan in force.

(3) A local appeal body for minor variance appeals should be composed of municipal councillors, as well by citizens deemed eligible by the municipal council.

(4) A number of sections restrict the addition—they're listed here—of new evidence in the hearing of an appeal. The Ontario Municipal Board should hear any evidence from residents submitted at the time of the appeal to the Ontario Municipal Board. This is crucial for public input on a proposal, because that's when the citizens do

harness their resources and hire their professional staff, and then develop detailed evidence.

(5) A number of sections restrict the addition of new parties to the hearing of an appeal. The Ontario Municipal Board should hear from any residents who wish to join at the appeal stage.

(6) This bill gives the municipality the power to regulate minimum densities and minimum heights of development. This is, in my opinion, plainly undemocratic. Private property should not be impinged upon any more than it is. A resident should not be forced to build something taller and denser than what she or he needs or wants.

(7) Bill 51 does not amend the administration and accountability of the Ontario Municipal Board itself, and it should, such as:

(a) the terms of office for Ontario Municipal Board members should be lengthened to reduce the effect of political appointments;

(b) compensation should be reviewed so the best qualified applicants apply;

(c) Ontario Municipal Board members should be required to regularly attend formal training on land use planning issues throughout their term of office;

(d) members should be selected against standard and published criteria for qualification;

(e) a list of eligible or qualified candidates for appointment to the Ontario Municipal Board should be developed and maintained as in the professional civil service here at Queen's Park;

(f) elected officials should only select members for appointment from the published list of qualified candidates developed by the civil service;

(g) qualifications of candidates for appointment should disallow former elected officials—most particularly municipal officials—former senior government staff, municipally especially, former lobbyists, development lawyers and other specialists involved in the development industry until a cooling-off period has taken place, at minimum.

(8) Minor variances heard by the committee of adjustment should be required to meet all four tests of the Planning Act, not only some of the four tests. Therefore, you need to amend subsection 45(1) to include the wording for approval. It's outlined in my submission.

(9) Section 37 of the Planning Act presently excludes the municipality from using financial donations secured under this section to conduct heritage conservation district studies. The need for heritage conservation of select buildings or entire neighbourhoods is often instigated by new development in the area of heritage significance. Therefore, section 37 of the Planning Act should be amended to allow the municipality to use these funds to conduct heritage conservation studies.

Bill 51 also mandates that the municipality must update its official plan every five years and the zoning bylaw every three years. This will be nearly impossible, in my opinion, for large cities such as Toronto to do.

Toronto's new official plan is presently in its fourth year of appeals at the Ontario Municipal Board, and the Toronto zoning bylaw is sorely out of date by 20 years in most areas. This will serve only to reduce the municipality's integrity at the Ontario Municipal Board, since the updating will not be achieved and the responsibility will fall on the municipality for failing to meet this arbitrarily high standard. The developer will be able to punch holes in the armour of the municipality's defence, and the Ontario Municipal Board will once again rule on the side of the developer, who has proposed a development in a neighbourhood they don't know or care about.

All through this bill are provisions that allow the minister or the Ontario Municipal Board to usurp the municipality's power and interest. This should not be. City councils need to have the final say over development proposals. If the provincial government will not abolish the Ontario Municipal Board—nowhere else do we have one—then at least give the necessary autonomy to the elected officials of the municipality over which the Ontario Municipal Board looms. Then accountability will rest with elected officials where, in a democracy, it belongs.

Bill 51 does not change the Ontario Municipal Board. Bill 51 does not change the Planning Act for the better. What does it do? It only restricts citizens even further from having any real control over the planning of their city. This bill enables elected provincial officials to shirk responsibility and defer to appointed members of the Ontario Municipal Board. It seems the provincial government would rather listen to the concerns and count the election contributions of developers than those of the citizens they purport to represent.

Where will it stop? The province still has not adopted election campaign finance rules that exclude developers from feathering the nests of sitting MPPs and, most particularly, municipal politicians.

There is no justification, in my opinion, for the role of the Ontario Municipal Board in Toronto as proposed in Bill 51. Toronto needs real autonomy over its planning decisions, and Bill 51 only hinders the process and continues to favour developers over the people through their elected representatives.

The Chair: Were you going to speak? Go ahead. You're at the nine-minute mark, just so you know.

Mr. Jenkins: Thank you. I will try to be brief, although I may go on. First of all, let me say that I agree very strongly with everything that Councillor Walker has said here, and I particularly concur with the recommendations. What I'd like to do with my remaining time is give you a real-life example of the things that Michael Walker has talked about, one that has occurred in my ward, and I'd like to extrapolate from that to talk about the financial implications that exist both for the city and also for the province in the types of things that are occurring at the OMB in other development applications.

I'd like to quote from an article that appeared in a local newspaper recently. It says, "Residents of North Toronto who cherish our great relationships with area merchants were disappointed with the closure of the local

gas station at the corner of Mt. Pleasant Road and Keewatin Avenue a few years ago. Later, they became alarmed when they learned that the new property owner proposed a large apartment building for the site. Now, with the recent decision by the Ontario Municipal Board to actually permit the proposed building against the will of city council, many are furious."

There are a few things that really are said in that statement. The original property owner, probably not by will, had become a land speculator and profited very greatly. There are financial implications for all of us in this room, both at the provincial level and the city level, and I'd like to get to that later on.

"The proposal is for a 159-unit apartment building totalling 13 storeys"—by the way, this is straight across the street from single-family homes on both the north and east boundaries—"and would cover not only the gas station site but also eliminate the treed green space immediately to the south fronting on Erskine Avenue." So we're going to lose part of our urban forest canopy as well.

"After seeing the initial application, the Sherwood Park Residents' Association ... organized the community to seek a more compatible development. They proposed alternatives which were rebuffed. The developer appeared very confident of success, despite the additional opposition of city planning staff who also found that the application did not conform to good planning principles as embodied in the city's official plan.

"City council listened to arguments of both sides and decided to reject the application based on sound planning arguments presented by the community and city staff. The applicant then appealed, as permitted under the provincial Planning Act, to the OMB.

"The board—in this case, one person from an unelected, unaccountable body of men and women appointed by the provincial government—reheard the entire case and came to the" exact "opposite opinion of the city, its planning staff and the community. In the course of permitting the entire development, the OMB rejected the evidence of one resident," a professional architect, "simply because he lives in the community and hence would be biased. Strangely, the board did not reject the evidence of a professional planner hired by the applicant for similar potential bias." It's almost a systemic bias against communities when you see this kind of thing occurring in a decision.

"No wonder developers display supreme confidence in their appeals to the OMB. They almost always win. As well, they win in ways from which observers infer that the board does not present a level playing field for residents who want to preserve the best of their communities."

1610

The amendments in front of you today would really not prevent this from happening; Councillor Michael Walker's amendments would.

I want to talk about the financial implications of this, both to the city and to the province. The 159 suites would represent part of the growth of the city of Toronto in the next year. We'd have approximately 250 new residents.

The city would have to provide infrastructure. We have to provide infrastructure as the city grows. What are we doing currently? We're asking the provincial government and the federal government for money. We're on bended knees. We shouldn't really be doing that; we should be capturing the money for that growth at the time the demand is created.

What do we get, by the way? We'll get about \$900,000 in development charges. How much will we need? That's a difficult question to answer, but there is a way of determining what that might be, and that is to figure out how much infrastructure the city currently has, and how much we have per resident. It's actually a well-known number at the city. We have between \$50 billion and \$60 billion of infrastructure supporting the residents of Toronto. That's subways, it's buses, it's municipal infrastructure in terms of sewers, water mains, whatever. For each citizen, you divide 2.5 million people into the \$50 billion, to be conservative, and you've got \$20,000 of infrastructure per person. As we grow, we have to supply new infrastructure.

It's an open question. The developers would say, basically, "Do you know what? All the infrastructure exists. You don't have to provide a penny more." I personally think that's false. I don't know what the right answer is, but I know that we're asked to provide new subways, we're building new water mains, we're building new sewer capacity. I personally think the number that we have to provide for each new citizen is probably not unlike the number that exists for each existing citizen: \$20,000 each. So these 250 people, on that math, would require \$5 million of development charges, and we're getting less than \$1 million. That's a \$4-million shortfall.

By the way, the province loses as well. Right now, you are upgrading Highway 401. It's costing you a fortune to do that. You've been doing it almost continually for years. Why are you doing it? You're doing it because the city is growing. You get zero dollars as well from development; you get no development charges. The Toronto District School Board gets zero, and they have continually had a problem.

Interestingly, the Toronto Catholic District School Board will get \$400 a unit in development charges; they'll get about \$70,000 in development charges from this project. I have a feeling that's probably not a bad number for them; they're almost being kept whole. But the province, the city and the Toronto District School Board are not being kept whole by these developments.

The OMB is part of it. The OMB approved this, and it's part of the growth of the city. So I think that basically, as a start, you're going to have to consider the amendments proposed by Councillor Walker, and you're also going to have to step up to the completely inadequate financial arrangements that result from this. Thank you, Madam Chair.

The Chair: You were on a roll there. You have about three minutes, so that gives one minute to each party, beginning with Ms. MacLeod.

Ms. MacLeod: Thank you both for attending. I always get a little nervous when I am in front of another politician who has time in elected office for almost as long as I've been alive, so permit me to—and that's meant as a compliment to you.

Listen, I share your frustration with the OMB. Right now in south Nepean we have a case where our council's decision has been overturned based on our official plan. We wanted a town centre in our community. The zoning has been changed, and the developer won.

I'm really happy that there are two city councillors here from the city of Toronto, because we were under the impression that the city of Toronto was praising this plan. The Toronto Sun reported on Tuesday, December 13 that "Mayor ... Miller praised the plan" and said, "Neighbourhoods and people who live in them have a real right to a real say over development." He goes on to say in the National Post the same day, "By allowing the city to steer, rather than the OMB, I think it's a much better situation, and I think that should mean fewer applications go to the OMB."

You have effectively said that Bill 51 does not change the Planning Act for the better, which obviously my colleagues and I would agree with. I'm wondering, with the number of city councillors in the city of Toronto—as you know, my riding is within the boundaries of the city of Ottawa, and I am finding that the five city councillors who represent my riding actually oppose this as well. I'm wondering, which is the predominant view in the city of Toronto? Is this for better or for worse?

Mr. Walker: I would think the predominant view is the one that we represent and also FoNTRA. FoNTRA is an umbrella organization that represents over 125,000 people in the resident groups that have organized in five ridings. The councillor and I represent two of those. They have organized and spent hundreds of thousands of dollars fighting developers and losing at the board. It's a fait accompli. There's a contempt. As a matter of fact, there's open hostility if any politician dares show their head. They order in the sheriff and want you shackled and sent off for 24 hours to cool off or something. So my assessment is that the mayor is waxing eloquent in general terms, but you just wait. It's not going to make anything better. Quite frankly, he's got a major challenge on his hands with somebody who's of a different opinion—that lady, who is about your age, who is challenging him.

Interjections.

Mr. Walker: I'm sucking up to Councillor Pitfield just for a future vote.

The Chair: Thank you, committee. When I said you had one minute, it wasn't two minutes to ask the question, so please remember your time.

Mr. Prue, you have one minute.

Mr. Prue: Ontario is the only province that has an OMB; that is, a municipal board. All the rest have done away with it. Do you have any evidence that that's caused any problem to any of the other nine provinces or the people who live there?

Mr. Walker: No. As a matter of fact, all seems to be happiness and love and pixie dust, and there isn't here. There's real anger and a sense of no empowerment and loss of control over change that takes place.

If people are going to make mistakes, it's better that the governed, the citizens, make those mistakes through their elected officials. It works in the republic of the United States in the House of Representatives, where they get elected every two years. And you can be assured that they have to be very careful when they do their nation building. But they've succeeded in doing that. And it's better to have elected officials make mistakes and be accountable in the ballot box.

The Chair: Thank you. Mr. Sergio.

Mr. Sergio: I can't let you go scot-free, Michael, you know? We've known each other for a long time.

Mr. Walker: Yes, we have.

Mr. Sergio: We have. And it's wonderful to see you again, and Councillor Jenkins here.

You have pointed your presentation mainly at the OMB. I have to say, some good changes are coming to the OMB indeed. Regrettably, time, I guess, didn't allow you to delve more into Bill 51 and what it really does for municipalities in Ontario. And there is a lot of good with respect to Bill 51.

But let me say one thing before I let you run. The city, not the OMB, often makes awful, awful decisions. Weston Road—one application did not go to the OMB because the residents are too poor and disorganized. How did you approve 15 high-rises at Weston Road and Finch, 22 storeys high, at one of the worst intersections in Metro? That application didn't go to the OMB; it was dealt with by the city. That's a terrible decision.

Mr. Walker: I don't know the specifics, but—

Mr. Sergio: It's not part of Bill 51, but—

Mr. Walker: —I suspect it's in compliance with the provincial policy relative to intensification. And their representative doesn't know how to be an advocate for people who need—they're empowered through their elected official. Quite frankly, if we make bad decisions, it's better that elected officials, whom the citizens, the governed, can get their collective hands around and wring their necks, make them rather than an appointed body that's accountable to nobody and is usually all compromised with other interests.

Mr. Sergio: Absolutely. I agree with that.

The Chair: Thank you, Mr. Walker. Thank you both, gentlemen.

Interjection.

The Chair: Thank you, Mr. Sergio. We appreciate this lively conversation at the end of a very interesting day.

I'd like to thank all of our witnesses and our members and our committee for their participation in the hearings.

This committee now stands adjourned until 10 a.m. on Tuesday, August 8, 2006, in this room, room 151.

The committee adjourned at 1618.

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Tuesday 8 August 2006

Mardi 8 août 2006

*The committee met at 1003 in room 151.*PLANNING AND CONSERVATION
LAND STATUTE LAW
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT DES LOIS
EN CE QUI A TRAIT À L'AMÉNAGEMENT
DU TERRITOIRE ET AUX TERRES
PROTÉGÉES

Consideration of Bill 51, An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts / *Projet de loi 51, Loi modifiant la Loi sur l'aménagement du territoire et la Loi sur les terres protégées et apportant des modifications connexes à d'autres lois.*

The Vice-Chair (Mr. Jim Brownell): Good morning, ladies and gentlemen and committee. I would like to welcome you to our second day of hearings. I hope that we have a free flow of presentations and questions and answers. For those who are here in the gallery and those who are presenting, understand that the presentations are 20 minutes. You have 20 minutes to use at your discretion. Should there be time at the end, that time is divided between the three parties. I don't think there is anything further in housekeeping orders.

TOWN OF THE BLUE MOUNTAINS
MUNICIPALITY OF GREY HIGHLANDS

The Vice-Chair: We will be starting with the presentation by Jones Consulting. If you would please identify yourself for Hansard, and if those from your firm who will be speaking would also identify themselves for Hansard when they begin speaking, that would be appreciated. It's yours.

Mr. Michael Martin: Yes. My name is Michael Martin. I'm a councillor with the town of the Blue Mountains. The presentation was arranged by the Jones Consulting Group on behalf of the two municipalities, Blue Mountains and Grey Highlands. I'm presenting this brief on behalf of both municipalities. I have with me this morning our mayor from Blue Mountains, Ellen Anderson, and also our chief administrative officer, Paul Graham. I also have with me the mayor of Grey Highlands, Brian Mullin, and Ray Duhamel, a consultant with the Jones Group on energy matters.

Blue Mountains and Grey Highlands are pleased to respond to this legislation. Both municipalities are not satisfied that section 23 provides an appropriate regulatory scheme for alternative energy undertakings, particularly wind farms. Further, Blue Mountains takes exception to several of the Planning Act amendments, which if passed will impact adversely, in our opinion, procedures for official plans, subdivision and zoning approvals, as well as OMB processes.

Blue Mountains is an amalgamated municipality approximately two hours' drive from Toronto. It lies east of Owen Sound and west of Collingwood. We have the largest ski facility in Ontario—Blue Mountain resort and Interwest—and we have the largest Canadian private ski facilities. Our area is blessed with the Niagara Escarpment in the middle; we are on the shores of Georgian Bay; and we have an active agricultural industry with specialty fruit farms, cash crops and horses.

Grey Highlands, our associated municipality, is 350 square miles. It borders on our east side and south. It has portions of the Niagara Escarpment as well. It's also an agricultural community with cash crops, hunting activities and ski resorts.

We support the government's intentions to have a transparent public process for approval of energy projects and land use planning. We agree with Minister Gerretsen that "greater information, public participation and consultation ... take place earlier on in the planning process. This would give local residents and community leaders more opportunity to play a part in planning...." We support the requirement that the OMB have regard to municipal council decisions. However, we feel that the methodology in the Planning Act amendments fails to meet these objectives.

First, dealing with the exemption regarding energy projects, this relates to section 23 primarily. The Blue Mountains and Grey Highlands have been targets for large wind farm energy projects. These are projects consisting of multiple towers, sometimes in excess of 400 feet. The power is principally to augment Toronto and the GTA's insatiable power requirements. These exemptions under section 23 include wind farms and also nuclear or fossil fuel power plants. Exempting these from the Planning Act precludes municipal land use designations in either OPs or zoning matters, notwithstanding that the province's provincial policy statements require the inclusion of energy issues in OPs. Section 23 places

the applications under the Environmental Assessment Act, in which the minister or the Lieutenant Governor—actually the government of the day—has the final say regardless of the public hearing process of the Environmental Review Tribunal. This is set out in section 11.2 of the Environmental Assessment Act. The act divides undertakings into two classes—and we'll deal with wind farms—of greater than two megawatts and less than two megawatts.

By virtue of a regulation under the act, those with less than two megawatts may not be subject to public review at all. It is not clear from ministry and provincial policies whether these projects, the lesser ones—however, keep in mind that some of these lesser ones involve towers of 34 storeys in height, so they're not particularly small projects. Our question is, how do these fall within the local rules of official plans and zoning regulations? Concerning the larger projects—that is, those multiple wind towers; probably the towers are in the range of 400 feet—the application process is only subject to ministry and proponent review, unless the minister, in his sole discretion, requests that the application be considered either by himself or the Environmental Review Tribunal. However, ultimately the minister may overrule even the Environmental Review Tribunal. In this regime, how does a municipality establish rules, whether official plans or zoning, to protect agricultural, residential and recreational uses from such issues as vibration, flicker shadow, ice throw, landscape pollution and noise? Is the municipality, which has no say in their location, required to provide roads, fire assistance or emergency services? Can municipalities rate development charges against these projects? The municipalities need certainty in these matters. There is an inequity of having the rural landscape becoming the home for such undertakings.

Grey Highlands and, to a lesser extent, Blue Mountains, in anticipation of having some jurisdiction in these matters, have devised various policies and environmental statements on environmental issues relating to wind farms. The question is, how does the process of exempting such major undertakings meet the government's aim of open transparency and involvement of community leaders in the determination of land uses? Mr. McGuinty, in his press release on Bill 51, said, "The proposed reforms would provide clearer rules and more effective process for the public.... They would also give local residents and community leaders more opportunity to play an important role...."

My recommendation on behalf of the municipalities is that at least there be a provision—at a minimum—that such undertakings meet site plan approval requirements adjudicated through the Planning Act.

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The next items relate to the Planning Act amendments themselves. The town of the Blue Mountains is experiencing unprecedented growth. There are some 3,000 to 4,000 actual or potential housing units in process and contemplated in the next five years, all requiring various amendments to the official plan, and consequential

zoning and subdivision applications. Our population of 12,000 ratepayers expands during ski season and special summer and winter events to in the range of 25,000 to 30,000 people. The definition of "employment lands" in the new amendments does not include recreational, resort and associated uses. We feel that these are of equal importance in our community, in which resort and residential facilities are the most significant contributors to our economic base.

Recommendation: that the definition of "employment lands" include resorts and recreational uses.

Our issues with amendments to the Planning Act relate to the change processes for the initiation and approval of official plan, zoning and subdivision applications. We agree that all matters relating to an application must be before council at the time council makes the decision. Council clearly has and bears the responsibility for planning matters. However, the changes to the act to support this objective, in our opinion, are flawed.

In the environment where nothing can be introduced on appeal which wasn't before council, council—not staff—must consider all such information in full detail. How do part-time councillors—which most small rural councils are composed of—meet such a requirement, and at what cost? This is a substantive burden for councils: to balance the applicant's legal rights as enshrined in section 61 of the Planning Act, which requires matters to be heard by the body which makes the decision, against the numerous other matters councils are responsible for. What is the legal effect of an absent councillor in making a decision on an application?

Section 24 of the amendments also exempts public bodies from making comments in a timely fashion before council. This exemption defeats the purpose of having all matters before council. This is particularly the case where these same public bodies may appeal council's decision without council's ability to question their views, because in the appeal, by section 44.2, which is on page 9, no new evidence may be admitted which wasn't before council. These kinds of exemptions for public bodies, i.e., some johnny-come-latelies, as we would call them, perpetuate the notion that there is one procedure for the citizen and yet quite another for the government. How does a municipality or any other party to a hearing challenge a public body's view, as cross-examination, which elicits new evidence on appeal, is prohibited as well? Such restrictions on fundamental rights do not support the objective of a fair and open process.

The abrogation of fundamental rights is further exacerbated as Bill 51, in section 44.6 and similar sections, exempts proceedings of the Planning Act from the requirements of the Statutory Powers Procedure Act. The current Planning Act does not even have such a section. The Statutory Powers Procedure Act was enacted to ensure procedural fairness for a citizen's right to have a public body which determines rights to act in a fair and legal manner. Is the message, one rule for the government and another for a citizen? Is there some emergency in land use planning which requires that these rights be abrogated?

Recommendation: that the Planning Act not be exempted from the Statutory Powers Procedure Act.

Further recommendation: that all public bodies meet regulated time frames for providing comments on planning applications and in appeals that the board on application may award costs for late filings, inclusive of costs to revise or amend and prepare supplemental information as a result of other information being provided.

As a municipality, we want a fair system for the determination of land use planning from initiation of the application to access to the judicial system on behalf of the ratepayers.

The Vice-Chair: Thank you very much. We have some time remaining—about three minutes for each party. We'll start off with Mr. Hardeman.

Mr. Ernie Hardeman (Oxford): Thank you very much for your presentation. There are a couple of areas I'd like to cover. One area is on the first page of your presentation, the issue of "shall be consistent with," which of course is in the act where it says that the municipality must be consistent with provincial policy. So in fact the planning is going to be done the way the province wants it done.

The second one is where they say that the OMB "must have regard to" the decisions of council, which of course in the former Planning Act was what council did with provincial policy statements. The province believed that that was not good enough because they would have regard for it and then do it differently.

Do you have concern that in fact having the OMB have that regard for doesn't change anything from what it presently is—they have regard for it and then they carry on and make the decisions as they see fit anyway?

Mr. Martin: Well, it's good that in the act it says that the OMB must have regard to council's decisions. I think that's important. But in my practice with the board over many, many years, I've never found a board member who hasn't had regard for council's decisions.

Mr. Hardeman: The other one is the employment lands. We've had other presentations that said the employment lands should include big box retail outlets. Your presentation points out that it should include the tourist industry and the recreational activity. If we include all those things, doesn't that take away the power to regulate or the power to zone in a community? Remember, you can't take away the employment lands, so you can't do anything. Where would you, then, allow the residential when someone made an application for residential in your community if recreational lands cannot be used for that purpose?

Mr. Martin: As is indicated, we're in a developing community, but the resort and recreational areas are very important to us. I did have some trouble with this section in the sense that I realize that if every municipality came here and said, "Well, what about us?" for this and that, you don't really have a definition in the end. So one of the things I would suggest is maybe that municipalities, on application to the minister, having regard to their particular circumstances, could include, for instance,

recreational uses in an employment land as a special exception.

The Vice-Chair: Next we have Mr. Prue.

Mr. Michael Prue (Beaches–East York): Back on the same thing: the area of employment, as defined. Subsection 1(1) talks about the area of employment, but it says it's without limitation and can be prescribed by regulation. Are you merely asking that recreational uses be included in the regulations once the act is passed and the minister has the authority to do so?

Mr. Martin: Yes. Because of the importance of these lands in our community, these recreational and resort areas are very important to our economic base, just as in the larger communities your employment lands are important to your economic base. It's just that there's a difference in the land use, that's all.

Mr. Prue: But the minister can prescribe any lands at all as an employment area simply with the stroke of a pen.

Mr. Martin: That's right.

Mr. Prue: So all you're asking is, after the act is passed, that the minister do so?

Mr. Martin: Right. As I said, one way around this is to have the municipalities apply, with leave.

Mr. Prue: I think the big problem with this bill—and we've heard from a number of people. Almost everybody comments on section 23; it's a huge, gaping hole. We particularly heard about the experience that you're having in Blue Mountain and area. How do you think that's going to affect the tourism industry or the recreational use of the land?

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Mr. Martin: The only contemplated proposal we had was an area involved with the escarpment. It was adjacent to the actual escarpment boundary, and we had felt that certainly could potentially harm our tourist environment, but more important was the inability to provide any type of regulation of this facility. How do you meet the conflict between agricultural uses and a wind farm?

Mr. Prue: That's one issue. The second issue, though, that I think is far more important is how the municipality is to be involved. You've raised some good points: whether you have to service it, whether you have to provide roads, whether you have to provide sewers, whether you have to include it in official plan amendments—a whole bunch of things.

The reason I'm asking this question is because you recommended, at a minimum, that it meet site plan approval. Surely, though, your goal is that you should be included throughout, not just at site plan approval. It shouldn't be in there at all unless it's part of your official plan.

Mr. Martin: Yes, that's correct, but I was thinking that this would at least be a minimum requirement. Municipalities, because of the other issues involved with energy undertakings—as I say, they can be anything from a wind farm to a nuclear power plant. So if the municipality had some control and could ameliorate their

conflict with land uses through the site plan, at least that would be one goal that's achievable.

The Vice-Chair: Now we'll move over to the government side. Mr. Flynn.

Mr. Kevin Daniel Flynn (Oakville): Thank you for the presentation. I have a few questions. First, I was interested in your remarks on the Statutory Powers Procedure Act. I spent 18 years in a similar role to you, as a member of council in Oakville, a fairly sophisticated community. I can remember using the Statutory Powers Procedure Act on two occasions. It was to hear evidence from somebody who was going to lose their licence to drive a taxi. Other than that, I don't recall us ever using the Statutory Powers Procedure Act for any other matter, especially not a planning issue. I was wondering if you could provide an example or a practical circumstance where the two may come into some sort of conflict or where the municipality may not have some power that it has now or where in the past the Planning Act has fallen under the Statutory Powers Procedure Act.

Mr. Martin: Actually, I was previously involved with Oakville. I was the counsel for Halton region for a number of years.

There's a situation, particularly in the OMB processes, where a party may allege that they were not given a fair opportunity to present evidence. In that situation, a party can make an application to court to consider the fact, under the Statutory Powers Procedure Act, that they were denied an opportunity to present their evidence. In that case, the court then can terminate the decision of the lower board and ask for them to rehear it. It's really an appeal process where there have been mistakes in the process and there's no other way of dealing with that. The province enacted that act in order to ensure that there was procedural fairness and you didn't have this jurisdictional argument between various levels of courts. That's the real nature of that act. It wouldn't apply to most municipalities except where—our biggest problem with the new Planning Act situation is, if there's a large application before council and council gets its time limits and starts denying the applicant a full opportunity to present their case, then that person normally could go to the courts and say he wasn't given an opportunity to present his case fairly. However, under this regime, the citizen is denied that opportunity because he doesn't have recourse to this act. I hope that helps.

Mr. Flynn: Can you think of any high-profile case that I'd be familiar with within the last 20 years in Ontario where that has happened?

Mr. Martin: I think the Barrie annexation case is an example, because that went to the Divisional Court and they said that had to be sent back and reheard.

The Vice-Chair: Thank you for your presentation. I appreciate your presence here this morning.

ASSOCIATION OF POWER PRODUCERS OF ONTARIO

The Vice-Chair: Next we have the Association of Power Producers of Ontario. Welcome. Please make

yourself comfortable. Should you need some water, there's water left and right. Once again, 20 minutes for the presentation. Should you not use all the time, we'll split it between the parties. Please state your name and anyone speaking here. In order to get them recorded in Hansard, we need the names.

Mr. Dave Butters: Thank you very much, Mr. Chair. My name is Dave Butters. I'm the president of APPrO. With me today is Sam Mantenuto, APPrO's chair. In his everyday job, Sam is the chief operating officer for Northland Power. Northland is an independent power producer involved in the development, financing, construction, operation and maintenance of power projects, including both thermal and wind-powered facilities.

We're a non-profit organization representing more than 100 companies involved in the generation of electricity in Ontario, including generators, suppliers of services, equipment, consulting services and so forth. Our members produce power from nuclear, hydro, fossil, wind, waste wood and other energy sources and currently produce over 95% of the electricity generated in Ontario.

Our mission is the "achievement of an economically and environmentally sustainable electricity sector in Ontario that supports the business interests of electricity generators in the context of the public good." Our objectives include a sustainable electricity sector that results in a reliable, affordable and secure electricity supply in Ontario; supports investment and appropriate allocation of risk; and supports all forms of generation technologies, among others.

As you are all only too aware, the province of Ontario is facing a critical shortage of electricity supply. The latest assessment of Ontario's electricity demand and supply by the Independent Electricity System Operator notes that "aging generation facilities and the continued increase in demand for electricity add to the urgency of proceeding with new generating and transmission facilities over the next 10 years."

This urgency has prompted a flood of announcements, procurement processes and programs aimed at either increasing supply or reducing demand. The Ontario Power Authority has been formed and charged with the mandate of formulating a long-term integrated power supply plan incorporating new supply from a diverse mix of resources and conservation programs aimed at reducing demand.

The electricity industry has responded to the government's procurement processes with proposals for power generation facilities using natural gas or renewable energy sources such as wind and hydro, and Hydro One has put forth proposals for new transmission lines in the province. However, we aren't making as much progress as we'd all like to see. In part, this is because there exist significant issues with respect to regulatory permitting and approvals for new generation developments that militate against the timely development of such projects.

In this context, APPrO is generally supportive of the amendments to Bill 51. The proposed amendments, along with the ensuing regulations, we believe can assist in

addressing barriers that are currently limiting the development of critical energy infrastructure. On the other hand, while the bill recognizes some of the limitations of the approvals processes related to the Planning Act, it is our view that the following issues still need to be addressed.

Uncertainty of time, cost and process: Our members are faced with decisions on projects costing hundreds of millions of dollars. Any investment decision by power producers and supporting financial institutions requires certainty in the estimation of potential costs related to approvals, certainty in the estimation of the time required to obtain those approvals and certainty in the determination of the scope of those approvals. That certainty is missing from the approvals process, and while Bill 51 acknowledges the shortcomings of the approvals process for energy projects, the provisions in the bill do not fully rectify the lack of certainty.

Prioritization of projects before the Ontario Municipal Board: In the existing approvals process, there is no prioritization of the projects that are appealed to the OMB. A variation in the size of a \$5,000 backyard deck, for example, could be waiting for an OMB hearing or appeal in the same queue as a \$500-million power plant. The bill should address this issue or certainly regulations might.

Defining and limiting the scope of public consultation: Bill 51 does provide for enhanced public consultations but without defining the scope, extent or limits of those proposed consultations. Not defining the scope of consultations could serve to exacerbate the uncertainty associated with the approvals process.

Flexibility in addressing minor variances: A power plant is far more complex than a building or structure that is typically under the purview of the Planning Act. This necessarily implies that there will be variations associated with a power plant; some of them will tend to be minor. An example would be a proposed building height of a power plant building or structure that is, say, 11 metres tall instead of a zoning limitation of, say, 10 metres to accommodate critical power generation equipment whose size can't be reduced.

Bill 51 doesn't provide a mechanism for such minor variations to be addressed and managed in a quicker, parallel process, with the result that the overall project schedule could be weighed down and delayed because of these minor variance issues.

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The applicability of the Environmental Assessment Act and environmental screening processes: We are generally in support of sections 23 and 24 of the bill, which enable cabinet to issue regulations prescribing certain energy-related undertakings or classes of undertakings which would be exempt from the Planning Act if such undertaking or class of undertakings has been approved under or has been exempted from the Environmental Assessment Act, but this section refers to category A projects. Most projects that are proposed under the current Ontario Power Authority RFPs process belong to

category B of regulation 116/01. With respect to the scope of undertakings or classes of undertakings that will be prescribed, it's our view that the regulations should be broad enough to capture the types of undertakings that are expected to contribute most significantly to the province's efforts to increase its electricity supply capacity in the coming years, as well as to capture the types of undertakings for which the most significant delays in municipal approvals processes have been experienced. These will be category B projects, and these would include gas-fired projects.

Conservation easements and covenants: There is a concern that certain amendments in part II of the bill, amendments to other acts which have the effect of facilitating, broadening and strengthening conservation easements and covenants, could give rise to potentially significant impediments to hydroelectric development and redevelopment projects. In particular, the concern is that if upstream or downstream landowners grant conservation easements or enter into covenants with conservation bodies, as defined in the Conservation Land Act, particularly for purposes of protecting water quantity and/or for watershed protection and management, no hydroelectric development or redevelopment that would require use of that land—for example, for flooding—could take place, because the easement or covenant cannot be modified and may reach a point where it does not expire. Moreover, there do not appear to be sufficient powers in the Conservation Land Act for the minister to exempt, override or otherwise render an existing conservation easement or covenant to be of no force or effect against the use of the land or the expropriation of the land for purposes of power generation. There is a further concern that such easements and covenants might be used strategically to block such developments by adverse stakeholders. The potential to impede development or redevelopment of power generation facilities would be inconsistent with the intentions of the provincial policy statement and other statements of provincial government policy that recognize the importance of maintaining and adding new generation capacity to meet the projected needs of the province of Ontario. In addition, such a result would be at odds with the intent behind section 23 of the bill, i.e., to facilitate energy-related undertakings.

The requirement to "have regard" to municipal council decisions: Section 3 of the bill provides that section 2 of the Planning Act would be amended such that governments and the OMB would be required to have regard to any decisions made by the municipal council or approval authority about the applications and any material considered by those bodies. It is suggested this obligation not arise where the decision made by the municipal council conflicts with provincial policy, whether that be the provincial policy statement or other express statements of provincial government policy.

The requirement for planning decisions to be "consistent with" provincial policy statements: Section 4 of the bill provides that planning decisions and comments by public authorities on planning applications must now be consistent with provincial policy statements. Given

the clear demonstration of the important role in good planning that is played by electricity generation in the current provincial policy statement, this proposed amendment is welcome. The PPS includes electricity generation within its definition of infrastructure, and goes on to recognize the need for necessary infrastructure to be available to meet current and expected needs and that it be provided on a timely basis to meet those needs. The PPS also states that increased energy supply should be promoted by providing opportunities for energy generation facilities to accommodate current and projected needs and the use of renewable energy systems and alternative energy systems where feasible.

Decision-making based on plans at time of decision: We do not support the various proposed amendments that call for decision-makers in the planning process to make their decisions with reference to provincial plans, including the PPS and provincial plans under the Greenbelt Act, the Places to Grow Act, the Niagara Escarpment plan or the Oak Ridges moraine conservation plan, as enforced at the date of their decision rather than the long-standing practice of making decisions with reference to such plans and policies as at the time the respective application was made. It is unreasonable and unfair to hold an applicant to a standard that did not exist at the time of their application. An applicant that is in the process of developing a project, particularly a large project with long lead times, should at least be entitled to progress in their project development with certainty concerning the planning parameters within which they will be required to design their project. Moreover, the proposed amendment would unreasonably break from the approach that is traditionally taken by the courts in applying legislation, whereby legislation is considered as at the time of the matter in dispute rather than at the time the court hears the matter. There does not seem to be any sound rationale presented to justify breaking from this tradition in the context of planning approvals.

Approvals streamlining: We considered other related issues that need attention, and while they're, frankly, not directly part of Bill 51, they do point to the fundamental tension around the fact that electricity supply and transmission are planned on a provincial basis, and it is not in the public interest to have local need become the measure for proceeding to site a facility approved for provincial public interest.

APPRO's view on this is that there should be one review at the provincial level, where municipalities and citizens participate. The decisions then hold and are not revisited under the provisions of the Planning Act. A related issue has to do with proactive planning for electricity supply like water, waste and roads when municipalities are proponents for additional supply if they wish to expand and in fact do not get approvals or grant approvals at primary and secondary planning stages without sufficient electricity supply. The problem is that municipal planning and growth decision-making is disconnected from electricity power planning. For example, the onus for ensuring sufficient water and waste water

versus electricity capacity differs. This gulf in municipal and electric power planning is a legacy of the demise of Ontario Hydro as a central planning agency.

The onus to ensure sufficient electricity supply capacity before municipal approval of development should be placed on municipalities. Municipal growth plans should have the same obligations for ensuring electric capacity that is required for water and waste water capacity.

Another issue is brownfield redevelopment. Here the issue is municipal and community pressure to convert use of existing electric industry properties to other uses at the end of life of such facilities, and this impedes site redevelopment. Simply put, brownfield sites can have significant advantages over greenfield sites, and the logic of the smart growth concept, which seeks to maximize the use of existing infrastructure, should apply equally to electricity projects.

There are many other planning issues, again largely outside the ambit of the current bill and this committee—but which must be dealt with nonetheless if we're going to successfully make new power projects really happen. We'd be pleased to discuss these with members at any other time.

Finally, there's the issue of multiple and overlapping approval processes. In BC, the province has enacted the Significant Projects Streamlining Act to reduce red tape and regulation and streamline processes for both government and businesses. When the act was introduced in the BC Legislature, the sponsoring minister noted that the act would allow cabinet, by a designation, to assign special status to projects deemed to be significant and that would positively benefit the economic, environmental and social well-being of British Columbia. I would draw that legislation to your attention. It doesn't change provincial or federal environmental health or safety standards, it doesn't affect aboriginal rights and title, but it does focus attention on actually getting projects moving forward. Our understanding is that it has been quite successful. In our view, Ontario could take a lesson from BC and consider adopting a similar statute.

We would respectfully request that the above points be considered as Bill 51 moves through the legislative process. That concludes our remarks. Thank you very much. I'm happy to answer questions.

The Vice-Chair: Thank you very much. We have about two and a half minutes. We'll start with the third party.

Mr. Prue: There have been many deputations; yours is the first in support of section 23, you'd be surprised to know. Section 23 freezes out the municipalities from having any say on whether or not a development would take place in their municipality or in the area. You have suggested another alternative, or at least it seems to me you have suggested another alternative, and that is to have the processes fast-tracked, where the municipality would be involved but would be under a time obligation to do it more quickly. In terms of the section 23 argument, you said you were in support. Would you think fast-tracking it and leaving things as they are would be

preferable to having the municipalities frozen out altogether?

Mr. Butters: Well, I'll ask Sam to jump in here. On section 23, I think the issue there is the category A and category B issue; probably not so much the fast-tracking but the inclusion of those category B projects, which would include gas-fired projects. If you could layer the fast-tracking on top of that, I think that would be of significant assistance.

If we're looking at new power projects today, you could say it would take 36 months to build a gas-fired project, but then you have to add on top of that all of the approvals, planning, ESP and EA issues, so now you're looking at probably anywhere from, for example, three to six years for those projects to come forward. But the critical issue on section 23 is that we are supportive, but we do believe that it should be broader in its scope, and include that category of the gas-fired projects.

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The Vice-Chair: If you could just state your name, please.

Mr. Sam Mantenuto: Sam Mantenuto. I think you have to look at it from two perspectives, from the longer-term perspective where, if things were changed such that the municipalities, as David said, had to include electricity infrastructure in their planning—that involves the municipality, and that requires them to look at it on a proactive basis. In the interim period, that has never really been their mandate, and it has typically been the Ontario Hydros of the world that used to do the planning. The problem is that the municipalities, while we believe they obviously should have the right to comment on and advise where those projects should exist and reside, oftentimes get overwhelmed with other views and other issues. It's very emotional, and it sidetracks the discussion.

As an example, there are areas within some of these municipalities that are zoned for power; however, it's for public power. It was written under the definition of the old Ontario Hydro regime. So now, when a private developer comes in, they're precluded from building on a site that was considered for power generation simply because they're not a public company. The definition, if it were changed to say "provide for public good," would allow them to build a project there. If it falls into the municipalities' hands, they react to local concerns, it gets overwhelmed with a whole bunch of different issues and just falls off the table. So you really need a fair, transparent, open process that deals with the facts. If a project can meet its environmental regulations, then there's no reason it shouldn't be able to proceed, in our mind.

The Vice-Chair: Thank you very much. We'll move to Mr. Sergio.

Mr. Mario Sergio (York West): We have heard similar presentations, and we'll probably have the same questions for you and for others later on. You mentioned at the beginning the shortage of power, the high demand for power, and aging facilities as well. At the same time, we have to contend with local municipalities that have a

right to deal with those issues. How do you marry the two? What would you like to see, not only in this bill but from the local municipalities, to facilitate that projects could indeed go ahead within a reasonable time, at the same time respecting the municipal process of the local municipalities?

Mr. Butters: In answer to your question—I think Sam addressed part of it, but the other part, the longer-term part, is the integrated power system plan. Our view is that there is this tension between municipal planning and electricity planning. The IPSP should accommodate those kinds of considerations at the provincial level, and then those other issues can be addressed within the context of municipal processes. There is definitely a tension. We're on the way to resolving some of this with amendments to Bill 51, but we still need to do further work.

Mr. Sergio: I hope so. How do you get the public involved in this particular issue?

Mr. Mantenuto: In order to get a power project permitted, you have to go through the MOE process; in the case of a category B, through the screening process. That requires public consultation. That requires open community input. It requires you to have public open houses and involve the public as part of that process. That, by definition, gets taken into account and is factored into when you design and get your permits for air and emissions. Then you have to go through the local planning process in order to get your local planning permits. What happens is that when they get derailed because of other issues—I can give you all sorts of them—it protracts the process, and what should take you six months could become two or three years, with no defined process or time frame within the OMB.

If you follow the MOE process, you by definition involve the public and all levels of government. If there are disputes, then they should be able to be taken to the OMB on an expedited basis. I believe that would help significantly.

The Vice-Chair: Thank you very much. Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. I wanted to go, as Mr. Prue did, to section 23 and the fact that utilities are exempt from the planning process. We've heard from a lot of municipal people who say that there's something wrong with that because it's part of land use planning. If you're going to build generation capacity somewhere, it's important in the community where that's built, how it's built and so forth.

You mentioned that it will streamline the process to get more electricity on stream, and we all know that's what we need to supply our market. Could you tell me how much time it would save to not have to take—a project that's 10 years in the making, what percentage of time would be saved by avoiding the planning process? Secondly, I'd like to know, in your opinion, why it's more important to exempt electricity generation, while other very important projects are being applied for but have to go through the planning process because they're not exempt. What's the importance or what's the priority

that we should put on electricity that we should have no say, municipally, on where those facilities are being sited?

Mr. Mantenuto: Well, I have to push back, because I don't know who's telling you that the municipality has no say in where those projects are being sited. We've built projects in Cochrane, Kirkland Lake, Iroquois Falls; we're proposing a project down in Thorold-St. Catharines. Every single municipality has been heavily involved. You have to get your local planning permits—

Mr. Hardeman: If I could just correct you, this act says, "You are no longer subject to the Planning Act," so this act takes away the municipality's involvement in your projects, period. I'm not objecting to it. My question is, why is electricity different than other planning issues?

Mr. Butters: Let me answer part of that question. There are two aspects. One is a short-term critical issue, which is that we desperately need these new projects. The second part is that there is a parallel planning process taking place, and that is the integrated power system plan. It would seem to be common sense to me to not want to have overlapping or duplicating planning processes. The IPSP will be a rigorous process that'll go to the Ontario Energy Board and be approved by the board. There will be many opportunities for public input into that. So I guess that's the issue: that there is another process that's taking place. I think perhaps the government contemplated that with this section.

The Vice-Chair: Thank you for your presentation.

DIAMANTE URBAN CORP.

The Vice-Chair: On our agenda we have "10:40 to be confirmed." There is nothing to confirm, but we do have Diamante development corporation here, if Julie Di Lorenzo, president, could step up.

Welcome. Make yourself comfortable. Should you need a glass of water, feel free. Once again, 20 minutes for the presentation. As you can see, we take the time remaining and split it between the three parties.

Ms. Julie Di Lorenzo: Thank you. I have with me also Dr. James McKellar, who will take a small portion of the remainder of my presentation. I will begin.

Good afternoon, distinguished ladies and gentlemen. My name is Julie Di Lorenzo, president of Diamante Urban Corp. I am also past president of the Greater Toronto Home Builders' Association. I'm honoured to serve on many cultural and community advisory boards on behalf of Ontarians, such as Harbourfront, St. Michael's Hospital, Schulich's real property advisory board, and Taron, formerly known as the Ontario new home warranty.

My company and our team have constructed some of the best-designed residential buildings in Toronto.

I wish to reiterate that from the start I have been and am now a strong supporter of growth management and the excellent planning work this government has done through the Ministry of Public Infrastructure Renewal and the Ministry of Municipal Affairs and co-operating

visionary municipalities in reawakening the public mind towards the numerous social and economic goals and benefits of efficient land use. In simple terms, it means that this government has designed the map for better quality of life through planned and well-served communities where people can live and work and realize their dreams and goals. I also congratulate the government on the legacy of the greenbelt.

Although I appreciate that the original goal of OMB reform had merits, I am now here opposed to two main parts of Bill 51 that, in my mind and heart, are draconian, unhealthy to the creative mind and soul of cities, offensive to the professional community and business community, blatantly usurp the Statutory Powers Procedure Act and endorse unfair process. I am certain that the government of Ontario does not intend to create this context or precedent. I am sorry that this bill has made it this far.

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First, who will want to work in an environment where there is political control over design? Bill 51 gives the power to municipalities. The provisions in this bill that give municipalities the right to choose brick colour, material palette and maybe even styles of projects would create the inappropriate situation of municipal planners—most with no real architectural or urban design qualifications—municipal councillors and OMB members making architectural decisions. It would be one thing if the bill allowed a municipality to impose the recommendations of a design review panel consisting of qualified individuals; and our industry has from the start volunteered to assist with this. Instead, the bill will give unqualified individuals the power to essentially change architectural details and drawings and set the design tone and direction. That is completely inappropriate.

If the goal is to improve the quality of buildings, this should be done in consultation with the design and development community, not in spite of it. These powers will suffocate the enormous pool of talent we have and will frustrate the creative city. A friend so kindly reminded me that we live in a city in which citizens demonstrated against the display of Henry Moore's work. At the same time, we have a tower designed by Mies van der Rohe and residents opposed the first sidewalk cafés. My team and clients want classic details, for example, when the critics of the day want modern design. We need to be very, very careful about letting the bureaucracy control design. My friend also remarked that it was interesting that the people most offended were the people who did some of the best work.

I had the pleasure of reading the document produced by the city and the province called *Strategies for a Creative City* and read that of the creative industries in Toronto the largest employers were architectural firms and design firms. Does the province not see the irony when this bill shuts out that talent yet commissions a report referring to the creative city?

Poet Laureate Pier Giorgio Di Cicco calls creativity our "limitless resource" and speaks about "nurturing and

promotion of creativity.” Ironically, he says, “You cannot legislate the human heart but you can inspire it.” This bill’s provisions regarding design control completely fly in the face of those truths. We have 25,000 architects and designers in Toronto, but this bill puts design in the hands of government. We as an industry will assist in a co-operative way to achieve higher and higher quality of housing, and will participate in voluntary design review and consultation with the building code, but I, for example, will not work in an environment where the responsibility and authority over design is in the hands of politicians and bureaucrats instead of the gorgeous pool of talented private sector professionals. This bill does not promote working together in that area.

The second main issue in the bill that I vehemently oppose is the one-sided restriction on new evidence that is in the interest of neither the applicant nor the residents and citizens of this province. To send files back to council delays projects for months and months, enough in the cumulative effect to seize up the industry and forestall the creation of necessary housing and place a serious imbalance in the system once the current approved projects are absorbed. Most businesses are judged in quarterly cycles, and there is already a serious problem when the development approval process alone, before any jobs are created, takes years and years. Imagine the unnecessary losses for the economy. These provisions regarding new evidence where only a public body has powers to introduce new evidence are also contrary to the Statutory Powers Procedure Act and would be a dangerous precedent to override fundamental rights in the future.

Supporters of this bill are not only hurting the industry that houses its population and is almost the largest contributor to the GDP, but also make the concerns of citizens insignificant by presuming that those concerns are aligned always with those of the public body. I have had files appealed by residents and welcome that process, since both sides have equal rights and contribute to the outcome. Most of the opponents of my projects are pleased with the final results, and this occurs because there is a fair exchange of evidence during the present process. This bill removes those rights from the citizens, the ratepayers and the applicants.

The bill presumes that councillors read third-party evidence, which they do not for the most part. I was advised by a high-level expert legal mind, and he said that there is a serious responsibility on the part of decision-makers to turn their mind to evidence. In simpler terms, that means to read it, understand it and respect it; and if not, the decision is arbitrary.

At council, the decisions are usually made based on staff reports, not on an analysis of third-party evidence supplied by the applicant. And the decisions are made at the direction of the lead of the local councillor, who depends on his local constituents to vote him back into office. I don’t fathom how the province sees the process as a fair hearing. The OMB is the only place where third-party professional evidence is qualified and is properly heard and vetted.

In order to accomplish what this bill presumes from council, timelines will be lengthened, doubled and tripled. Council will be able to do half of the work they do now or less. Many new staff members will need to be hired. Whole processes will need to be changed, including creating a venue for depositions, oaths and cross-examination, and millions and millions of dollars of business will be delayed and unnecessary costs added to the process, funds that could have gone into the economic prosperity of this province. Wasted money, a loss of jobs, a stifled economic force and a politicized creative community are what we see now in parts of this bill. Council, as presently structured, cannot assume these responsibilities. Council cannot decide the future of this province in an arbitrary fashion.

I wish to drop quickly in context some details of two OMB decisions and one incident at city council in Toronto. The first is the case of Dr. Marisa Zorzitto versus the city of Toronto. The appellant wanted to add a second storey to her one-storey bungalow and a wheelchair ramp. The appellant is confined to a wheelchair and the second storey was to serve as a residence for her caretaker. The neighbourhood opposed the application on the basis that the garage and the construction were out of character. However, the neighbourhood consisted of mostly three-storey houses. The neighbours’ opposition was an example of NIMBYism and discrimination against a handicapped individual. The case was heard at the OMB and the minor variance was granted. Here, the rights of a handicapped person were upheld by the OMB, not the C of A and not the elected official, who was pressured by a local ratepayer group.

The second is a case of a project of mine, 2 Roxborough East, a seven-storey residential project that replaced an obsolete six-storey building. This file needed to go to the OMB twice, as the neighbours opposed the project, as did the city of Toronto, pressured by the residents. The residents had said the project was unresponsive to their design concerns and would diminish their high-quality environment. Ironically, seven years later the city and the mayor applaud as a great city building that same building they opposed. Were it not for the OMB, the building would not have been constructed.

There is also a rather shameful incident where a prominent councillor wanted to change the address of a site from 888 Municipal Street to 44 Municipal Street so that it would not attract developers or certain clients.

All these cases have undertones of extreme discrimination, and council was not able to protect the process from the influences of that discrimination. Instead, the OMB formed its decisions based on a fair hearing of all the evidence.

These are not isolated examples. The OMB is an integral part of the planning process. It is there to properly sieve through evidence and align its decisions with planning intelligence of the day for the benefit of the future. It is there to implement the goals of growth management and it is there to provide Ontarians with a place to have a fair hearing regarding planning matters.

Bill 51 presumes the future design of our communities should be in the hands of elected officials and bureaucrats and not the expert professionals, and presumes that the public body is more relevant and important than the expert evidence and the incredible brain trust of professionals in this province. The provincial government I have grown to respect in the last few years would not pass this bill as we have it before us today. Thank you.

The Vice-Chair: Thank you very much. We have about two minutes for each party. We'll have the government side, Mr. Flynn.

Mr. Flynn: Thank you for the presentation. I enjoyed that. Could you expand a little bit on the idea you have about a design review panel? That intrigues me.

Ms. Di Lorenzo: We were inspired by the idea from the ministry and we actually sent delegates to Vancouver to see how it's working. In Vancouver, it's a voluntary process made up of experts. The government chooses some representatives and the private sector chooses representatives. For the most part, the process is accelerated and you get a better product at the end. We have been citing Vancouver as a great example of modern city-building. So clearly it's working there.

Mr. Flynn: The idea would be that it would be an option for the municipality?

Ms. Di Lorenzo: We would actually assist the municipality in setting a system up, but we'd like to participate practically in it, because right now we feel isolated from that process.

Mr. Flynn: Do I have more time?

The Vice-Chair: About half a minute.

Mr. Flynn: Just very quickly, why do you think that it's a good idea to allow the introduction of new evidence at an OMB hearing?

Ms. Di Lorenzo: I do believe some excellent things are part of this bill, where material must be brought forward for the planners in a full fashion. There should be no game-playing. By the same token, if a public body is able to introduce new evidence, it's not unusual to introduce new evidence in response to that evidence. The way it's worded or the way it's being discussed, it would have to go back to council again. In order to bring all the lawyers back together again, we're talking about three-, four-, five-, six-month delays in the process.

So I think the member has in the past very successfully decided whether that evidence is relevant and all the parties—I've been to many hearings—have decided at the hearing if there's been any unfair presentation of materials, and often it's been dismissed. So there is a process in place now that deals with new evidence.

The Vice-Chair: Thank you. Ms. MacLeod.

Ms. Lisa MacLeod (Nepean—Carleton): I thoroughly enjoyed your presentation, particularly on the design review panel. I'm very intrigued by that and I'd be interested in learning a little bit more. But first and foremost, I want to know: What financial impact on this industry are we going to see, based on the one-size-fits-all or the design process that's going to be put in place with the planning and conservation act?

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Ms. Di Lorenzo: What I see now is a council that is not prepared to hear evidence, so if it goes to the OMB and then new evidence has to come back—incredible delays. As I said, the development industry already has an average of a two-year approval process. Add more time to that.

Ms. MacLeod: And legal costs?

Ms. Di Lorenzo: And legal costs. It's not just a professional cost; it's the cost of not producing those units for the market. We've had enough supply now to keep markets affordable. We don't want the supply to dwindle. We have been very co-operative, in the understanding of growth management, understanding that certain areas should be restricted for development in terms of sprawl. But this would also impede the production of housing in efficient areas.

Ms. MacLeod: I just want to pick up on something that my colleague Mr. Flynn brought up, which was new evidence. Recently in my community new evidence was introduced by a developer which went against our official plan in the city of Ottawa, and was blatantly unfair. The community doesn't want it. It's not a case of NIMBYism. I'm wondering if there's a better way. Is there a way that things go back to council at another point? Because right now, the system is not working. You're telling us that your not being allowed to introduce new evidence later on would be a problem. Is there a better way?

Ms. Di Lorenzo: I think the pre-hearing also vets out evidence. There's a pre-hearing at the OMB process. So maybe if we expand it at the pre-hearing process. I don't think council is the place, unless you reform council completely. You only have to attend a council meeting; they do not have the time to read a stack of reports like this. There's no cross-examination; there's no check and balance. It's simply a report from staff. So it's very, very important to remove it from that process and bring it up to the OMB and possibly have an extended pre-hearing process.

The Vice-Chair: Thank you. Mr. Prue.

Mr. Prue: I don't want to be too sympathetic to the government, because that only gets me in trouble.

Interjections.

Mr. Prue: No, no. You are presenting the developer's side of the argument, but I have, as a former mayor, been there and have seen applications made before council, council has refused them, and they go to the OMB and the developer basically presents a brand new development that nobody has even seen before. Surely, this happens as well.

Ms. Di Lorenzo: We don't endorse that as appropriate.

Mr. Prue: But it does happen, does it not?

Ms. Di Lorenzo: I think the members should be clearly informed to not allow that to happen.

Mr. Prue: But this is pretty standard in a lot of cases.

Ms. Di Lorenzo: We've had seven projects, and they've all been at the OMB either because residents

have opposed them or we've had to oppose them, and that has never been part of the process.

Mr. Prue: Okay, so in your particular case this hasn't happened, but you must be aware of other developers who do this routinely.

Ms. Di Lorenzo: Sir, I'm also aware of OMB members who have said, "That's not admissible evidence." If there is to be reform, the process and the procedures have to be more formal and understood. A member should send that back.

Mr. Prue: I do agree with you somewhat that many councillors do not read the copious amounts of materials related to applications. In fact, I've seen them read none of it at all, sadly. Your response is that it should be taken out of the hands of the municipal council.

Ms. Di Lorenzo: No, I believe that the present process is fine for reviewing staff reports, but as you've admitted, the councillors don't even have the time—it's not even realistic to conceive of them having the ability to review all this evidence. It even needs interpretation; it needs questioning. We are more than happy for the evidence to be questioned in the legal process. I don't think anything should change at that place. I think the OMB could have clearer rules of process. The pre-hearing could be more elaborate to vet out new evidence that has been unfairly introduced. But it should happen at the OMB. There are so many councillors who say, "Please, get it out of my ward and bring it up to the OMB," because it's too sensitive an issue on a local neighbourhood basis. That's not in the interests of the community at large. Vancouver has council at large. It's a completely different political venue.

The Vice-Chair: Thank you very much. That brings us to the end of your presentation. I wish you a good day.

Next we have Blue Highlands Citizens Coalition. Would that group be here? They're not here.

CITY OF KITCHENER

The Vice-Chair: Is the city of Kitchener here? We'll move your presentation. Please make yourself comfortable. Should you need some water, there's water over at the side. Once again, 20 minutes for the presentation. For time remaining, as you can see, we split it between the three parties. Welcome.

Mr. Terry Boutilier: Mr. Chairman and members of the committee, my name is Terry Boutilier and I work with the city of Kitchener economic development department. I'm very pleased to be here today. The clerk is just distributing a three-page brief. My apologies for not getting it in earlier, but I've been out of the office for the last three weeks.

The city of Kitchener welcomes this opportunity to appear before the committee and to voice our support for the committee's work on Bill 51. In particular, Kitchener is grateful for the inclusion of section 13 of the bill, which revises the community improvement provisions of section 28 of the Ontario Planning Act.

Subsection 7.2 on page 15 of the bill provides the needed flexibility for both levels of municipal govern-

ment under a two-tier structure to share the costs of brownfield renewal. I'll diverge just a little bit. Kitchener is in the region of Waterloo, and there are many other, similar two-tier municipalities, such as Niagara, Durham, Halton, Peel, and many others. At the present time, however, for brownfield renewal, all of the costs are borne by the lower-tier municipality; that is, the city. Right now, the regions of the province are prevented from getting involved in providing any funds for brownfield renewal by the legislation.

In 30 years of practice, I have found that the most effective planning tools are those where we have several levels of government working in true partnership. The most effective partnership in Ontario in my lifetime was ONIP, the Ontario neighbourhood improvement program. Funded equally and co-operatively by three levels of government—at that time it was the city, the province and the federal government; the feds backed out in the early 1980s—and co-administered by the municipality and the province, ONIP changed the face of almost every city in this province. During the 1970s and 1980s, we rebuilt the inner cities of Ontario municipalities. We made them livable and attractive for residential investment for families. This partnership worked exceptionally well because we had a clear common objective amongst all those levels of government and a meaningful and equal financial commitment amongst all the partners.

We believe that ONIP should be the model for the implementation of Places to Grow as it relates to the renewal of our brownfield lands. Kitchener, like many Ontario cities, uses tax incremental financing to assist the private sector to clean up and redevelop our contaminated lands. We believe that TIF is best for our city for the following reasons:

First, it's risk-free to the governments involved. All the risk is shouldered by the private sector, where risk should logically fall. If they succeed, they are rewarded.

Secondly, TIF is a welcomed form of assistance by the private sector, since they can take the agreement to the bank.

Thirdly, TIF allows all public officials plenty of time to plan and budget for the expenditure, usually several years into the future.

Finally, the TIF method eliminates guessing as to how many applications will be received annually and how much money needs to be budgeted for in the next financial period.

Very briefly, a TIF works this way: Currently, you have a contaminated piece of land. The assessment is negligible because it's not valuable, so let's say they are paying \$10,000 in taxes a year, total. When they clean it up and they redevelop it for a potentially big project, of course the assessment goes way up and the tax generation for all levels of government goes up; let's say it's \$110,000. Now, in the future you have \$100,000, called a tax increment, that you can use. As I like to say, a municipality can put some money on the table when it really doesn't have any money to put on the table presently, but in the future it will. That's how a TIF

works. You give back to the developer a portion of that future tax increase so he can recoup his costs to clean up the land and redevelop it. It works well. It's an American model that the city of Hamilton introduced to the province, and many of us use it now.

On the third sheet, I have included a Kitchener example that we have just recently approved through our council. This is 52 and 90 Woodside Avenue: about 3.4 hectares in size, used for an industrial use for over 100 years in our municipality, thoroughly contaminated with every unspeakable kind of chemical that you can look at. The cost to remediate it was \$1.7 million. Under the current regime, prior to remediation it was worthless. Now it is valuable. In 2005—again, before remediation—here's the split on the tax generation: The city took \$11,000, the region took \$16,000, and the province got \$27,000 for education purposes, for a total of \$55,000. But now that the project is going to be cleaned up and now that they are going to make an almost \$30-million investment in the project, the projected taxes—again, only using the 2005 rates—are substantially more. Finally, you can see the increase at the very bottom.

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I'm going to go back to the letter on page 2. Note the current and future projected increased levels of revenue for the city, the region, and the province for education after the project has been successfully completed. Most importantly, note the increase—that is, the increment in taxes—for each level of government. However, also note that in this case, only the city of Kitchener is providing any financial support. In example one, over 10 years following project completion, the city of Kitchener will give up 100% of its tax increment, a total of \$1.215 million. In other words, we will not get any increase in tax revenue for 10 years following project completion. However, the region will gain \$1.8 million in increased taxes and the province will gain \$584,000. That's an increase in taxes that you're getting. That's money you can use for brownfield renewal.

The proposed revision to section 28 in Bill 51 will allow the city of Kitchener to approach the region of Waterloo so that we can both shoulder the financial burden on a more equitable basis. In the spirit of ONIP—here's a wild proposal. I want to go back to the 1970s. That's where I worked. If all three levels of government participated and were willing to become equal partners, and each contributed not 100% but just 50% of our tax increment as a financial incentive, we could see the following: The city would contribute \$140,000 over 10 years and still gain \$184,000. The region would contribute \$910,000 and they would gain \$910,000. The province would contribute \$292,000 but still gain \$292,000 in tax revenue over the 10 years.

Right now, the lower-tier municipalities are bearing the brunt of financial burdens because of the encumbrances in the legislation. The power of a three-level partnership becomes clear through this exercise. No one level of government shoulders the burden, and we all work with common purpose and equal commitment.

However, only with the approval and enactment of Bill 51 will they be able to do so.

We congratulate the committee for its work and we endorse the committee's proposed changes to section 28 in the Planning Act. Thank you for putting these provisions in Bill 51.

There are two people in the ministry I want to thank personally. One is Thelma Gee in the community and renewal branch—she's been terrific to work with over the last 10 years—as well as Bruce Curtis, who manages the London office for the ministry.

Thank you, Mr. Chairman. I'd be very pleased to answer any questions the members may have.

The Vice-Chair: Thank you. We have about three and a half minutes for each party, starting with Mr. Hardeman.

Mr. Hardeman: Thank you very much for the presentation. I suppose it always works that way: If the municipalities and the province come up with the money, we will all eventually benefit, if you consider the positive aspects of the project. We have a lot of brownfields around that are lying there idle because no one can build on them because the greenfield development is a much more profitable development.

I was interested in your analysis between the upper and the lower tier. Since they both have exactly the same taxpayer, the exact same tax assessment, what is the advantage to having both levels of government taxing the same property owner for the same benefit, rather than just having the upper tier do it all or the lower tier do it all?

Mr. Boutilier: There are two advantages. The first is that regions have a higher and broader level of tax base than the local municipality does. In the region of Waterloo's case, it encompasses seven municipalities, three of which are major cities—Waterloo, Kitchener and Cambridge—as well as four townships. The townships have similar problems because they have old industrial sites, waste sites, agricultural and manufacturing sites. So the first is that it's not exactly true that we have the same level of resources. The region has far more financial resources than the lower tier.

The second point is, the region is responsible for all of those matters which brownfields affect. The region is responsible for water supply and water quality—and we're on groundwater—yet they don't put a nickel into any brownfield renewals. The city is not responsible for water quality; they are. The region is responsible for public health, not the local municipality. These are public health issues in that they're toxic and the chemicals can be carcinogenic.

So there are my two answers.

Mr. Hardeman: Going on with that, then, since it is to protect our groundwater, the resources that the region is responsible for, and accepting that all municipalities have a certain level of contaminated areas, doesn't it make more sense to have the region become responsible for it in total, as opposed to the local municipality being involved?

Mr. Boutilier: I think that's an argument that could be successfully argued. I'd like to think that each and every level of government is responsible, because they all benefit from the renewal of the site. If the province puts in a little money, they get money back. If the region puts in money, we put it all back. If the three of us work together in making some contribution, we're all beneficiaries.

Mr. Hardeman: I guess that pretty much is the section of the bill that you spoke to.

We've been hearing a lot about section 23; I don't know if you've looked at that. It's the exemption for energy from the Planning Act. You're quite involved with municipal government and the responsibilities and so forth. I wonder if you have an opinion on whether it's appropriate to totally exempt energy projects from the Planning Act.

Mr. Boutilier: It's a question I'm not prepared for. I've practised now for 34 years in this province with many municipalities and I can see both sides of the fence, so to speak. Municipalities do and should have the ability in their official plans to designate major industrial facilities. This would be one, in my mind. They're worried about traffic movement, they're worried about noise and vibration, they're worried about threat to human life, and they're also worried about appearances: Is it going to be landscaped, is there going to be enough parking, that kind of stuff. So I think they do have some—

The Vice-Chair: Thank you. We'll move on to Mr. Prue.

Mr. Prue: This is an intriguing proposal. You ended your discussion by thanking people from the province and others who've worked for you, but—it's not in the bill and I haven't heard from any of them—are there any other proponents in the province of what you're suggesting?

Mr. Boutilier: I haven't taken a survey, but I would suggest yes. I would suggest that if you went to OPPI or to a number of the associations to put this proposal on the table, I think you would get some support. I also know, just from my discussions with colleagues at the Canadian Brownfields Network and others, as well as private investors, that they've often thought we need to work together more and get more financial resources. These properties really need help. If the city of Kitchener didn't put the financing on the table in this form, these sites simply would not be renewed. So I don't have a clear answer for you; I'm sorry.

Mr. Prue: We have Rob Horne coming from the regional municipality of Waterloo. I guess you probably know him.

Mr. Boutilier: I know Rob very well.

Mr. Prue: He's going to be coming this afternoon. Do you think it would be fair if I put the question to him?

Mr. Boutilier: I think it would be a fabulous opportunity. Rob used to be the planning director for the city of Cambridge, so he knows both sides of the stick, you might say.

Mr. Prue: All right, but have you discussed it with him? This is your counterpart within the region.

Mr. Boutilier: No, I haven't. The region is quite aware of what we would like to see happen and the region is quite aware that they can't at this point in time get involved with community improvement. It has been expressed to me several times by members of staff at the region that they are in support of getting involved, but unfortunately right now the legal aspects of the legislation prohibit them.

Mr. Prue: So you see this as a simple change to the legislation before it's passed that would make it easier for the province, the regional municipalities and the municipalities to work in conjunction and all see a financial benefit?

Mr. Boutilier: Yes, sir. I see a great deal of new flexibility. It allows us to discuss it with the region, where we can't do it now.

The Vice-Chair: Thank you. Mr. Sergio.

Mr. Sergio: Thank you very much for your presentation. In your capacity of not only improving but also bringing in some much needed new dollars for the local municipality—that is your responsibility there—how do you juggle your responsibility of promoting the city and promoting development in some ways, and at the same time reconcile that with the interests of local groups, individual citizens, ratepayers' organizations? What do you do? The bill contains some more powers to local people, where local authority is given to these new local appeal bodies. Do you, as a development officer, think it is a good thing to have local appeal bodies deal with some minor issues or not?

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Mr. Boutilier: On the first comment, one of the fundamental things we do within the structure of the city of Kitchener is trade economic developers and planners; we move them around so the economic development person understands the planning implications. I'm trained as a city planner, but I'm an economic developer.

This project, 90 Woodside, is a very good example. We had a very hostile neighbourhood, the Victoria Park Neighbourhood Association, because they had problems for many, many years with this site. When we went out to a number of conferences and started attracting developers from the GTA, we showed them this site and they liked this site. The very first thing we did was have a major design charette with all of the community in January 2005. We had 60 residents come and meet the proponents, and the proponents designed the project along with the wishes of the residents, right down to architectural control. The residents said, "This is a stone-and-brick community. We want it to be a stone-and-brick addition to it." The developers said, "Sounds like a great idea to us."

When this project went forward to our city council, the entire community, with the exception of one adjacent owner, was in full support of the project. The adjacent owner was a business operator, not a resident, I'd point out as well. So I would say there are plenty of methods

by which, through incentives and encouragement and working both with the private sector as well as existing communities, the design issues can be resolved.

With regard to your second point about local appeal bodies, we've had a discussion locally. We see some problems with it. We don't know who we would appoint, first off. Could these people be members of council? Are these people going to get paid? There are some issues like that which we just didn't have answers for. We are always in support of more local control for decisions because it reflects the democratic way we run our cities, but on the other hand, there needs to be some determination as to exactly who would be eligible for that cherished position.

Mr. Sergio: Is there more time?

The Vice-Chair: About half a minute.

Mr. Sergio: Oh, good.

We have heard from some municipalities, especially growing municipalities like yours—yours is a very fast-growing community—on bringing new evidence on rezoning applications at the last minute. What does this do to the local municipality, and do you think it's fair that brand new evidence should be brought at the last minute?

Mr. Boutilier: Again, Mr. Chair, I wasn't prepared for these kinds of questions—

The Vice-Chair: A quick answer—

Mr. Boutilier: —but I'll give you my personal opinion: Is it fairness and the appearance of fairness?

Mr. Sergio: Thank you for coming down.

The Vice-Chair: Thank you for your attendance here today. I appreciate your coming to the hearings. Have a good day.

BLUE HIGHLANDS CITIZENS COALITION

The Vice-Chair: Next we have the Blue Highlands Citizens Coalition, Peter MacGowan. Please make yourself comfortable. There is water at the side. For Hansard purposes, please state your name at the outset of your presentation. You will have 20 minutes. The time remaining will be split between the three parties.

Mr. Peter MacGowan: Good morning and thank you for the opportunity to speak this morning regarding Bill 51. As noted, I am Peter MacGowan, founding volunteer president of the Blue Highlands Citizens Coalition.

Some brief comment regarding the Blue Highlands Citizens Coalition may be helpful. We are a group of residents of Grey county who are keen to play a positive, responsible and productive role in assisting with the development of appropriate policy relating to the environmental land use planning challenges associated with any proposed installation of large-scale wind turbines on lands within or in close proximity to the Niagara Escarpment plan area. While we are supportive of the concept of wind power development, we also support and passionately believe in Ontario's long-standing policy of long-term protection for the visual attractiveness and natural features of the Niagara Escarpment landscape. I

note that we strongly support the Niagara Escarpment Commission's restrictive wind power development policy. Our policy position is perhaps best and succinctly summarized by our catchphrase, which is "Wind is a renewable resource; our Niagara Escarpment landscape is not."

I expect that the committee has already heard from a number of speakers regarding section 23 of Bill 51. Our comments this morning are limited to that section 23. As you know, that section proposes that prescribed energy undertakings be exempt from Planning Act control and instead be subject only to approval or exemption under the Environmental Assessment Act.

There are a number of bases on which section 23 is appropriately criticized. It strikes us as being undemocratic. It strikes us as being unfair. It strikes us as being unnecessary, particularly in light of the recent 2005 revision to the provincial policy statement, whereby planning decisions taken by municipal authorities are required to be consistent with the provincial policy statement as compared to the former standard enunciated in the provincial policy statement requiring that local decisions have regard to the provincial policy statement.

However, there is really only time this morning for us to deal with our principal concern regarding section 23; i.e., that section 23 inappropriately proposes to place far too great an emphasis on a process—the environmental assessment process—which is recognized to be in significant need of reform. In particular, prescribed energy undertakings should only be removed from the purview of the Planning Act approval process if both the environment and the public interest can be adequately protected through the approval mechanism which is proposed to be relied upon; i.e., the environmental assessment process.

We believe that it is particularly important to focus on the recommendations by the Minister of the Environment's advisory panel on reform to the environmental assessment process, recommendations which were included in that panel's 2005 report entitled *Improving Environmental Assessment in Ontario*. A review of that panel's recommendations makes it very clear that the public interest will not be adequately protected if section 23 of Bill 51 is implemented. In particular, the panel's recommendations make it clear that the proponent-driven environmental assessment process, as currently operated and administered, presents little opportunity for the little guy—the passionate and responsible individual citizen—to be meaningfully engaged in the process through true and credible public consultation. Consider, for example, the advisory panel's observation that "there appears to be overwhelming consensus among EA stakeholders that the MOE must develop appropriate policy and guidelines to ensure meaningful public participation in the EA planning and decision-making process."

The report also observed that "Public input received by the executive group also supported the need to substantially improve public consultation within Ontario's EA program," and stated that the expert panel retained by the minister "strongly urges the MOE to develop and

implement long-overdue policy and guidelines to ensure meaningful public participation in the EA process for all sectors subject to the EA act.”

In its report, the advisory panel also noted that “The need for, and benefits of, funding public participation in the EA process is well documented in studies, reports and published literature,” and went on to recommend the development of an appropriate participant funding model for Ontario that addresses those public participation funding concerns.

Interestingly, the advisory panel’s report on environmental assessment reform also recommended that the provincial policy statement, which of course serves as the basis for the municipal planning and development decision-making process throughout the province, be adopted in the Environmental Assessment Act by cross-reference “as soon as possible.” The advisory panel did not recommend an elimination of the Planning Act approval process in the context of approvals for energy undertakings. Rather, the panel recommended a better integration and coordination of those two—i.e., environmental assessment and planning/development—approval processes.

1130

People are often more interested in real world experience than they are in arguments based on the content of written reports. Before concluding my remarks this morning, then, let me give you a sense of our experiences of the environmental assessment process—experiences gained in the trenches—in the real environmental assessment world as experienced by the typical private citizen or citizens’ group. We have been intimately involved with that process over the past three years as we have pursued our objective of a responsible and informed policy formulation and decision-making process in connection with the question of the appropriate scale and scope of wind power development on or in close proximity to the Niagara Escarpment.

Frankly, it has been upsetting and disillusioning. The project proponent has refused to share basic information regarding the project. Similarly, the provincial Ministry of Energy has demonstrated a shocking refusal to share such information with the local community, even after the award to the proponent by that ministry of a 20-year fixed price, multimillion dollar energy supply contract from the proposed project. At incredible expense of both time and money, we have organized and funded public information meetings, participated in conferences and written extensive comment papers to the Ministry of the Environment, the Niagara Escarpment Commission and the Ministry of Energy. We have made serious attempts to engage the project proponent in meaningful public consultation regarding the proposed project, and we have spent countless hours researching the relevant issues and evaluating relevant comparative experiences in other jurisdictions.

Indeed, in light of the project proponent’s reluctance to share basic project information with us, we were obligated to go to the time and expense of a freedom of

information act request, a request in which we were ultimately substantially successful but which involved a wait of nearly two years for the disclosure of basic information from the project proponent. And yet the end result of our efforts has drawn us to the upsetting conclusion that a concerned citizens’ group, even one blessed with legitimate concerns regarding a credible environmental land use planning issue—in this case, the preservation of our Niagara Escarpment landscape for the benefit of future generations of Ontarians—has little to no ability through the current environmental assessment process to be heard, or even to be meaningfully consulted, when faced with big business and big government interests in the context of the province’s proponent-driven environmental assessment process.

If our experiences with the environmental assessment process over the past three years—experiences which have involved incredible sacrifice on our part as we have diligently pursued appropriate protection for the Niagara Escarpment and support for the environmental land use planning objectives of the Niagara Escarpment plan—lead us to one unequivocal conclusion, it is this: that the environmental assessment process is currently not sufficient to, alone, protect the public interest or, for that matter, to protect the environment in the context of energy undertakings. Unless and until the environmental assessment process has been reformed, as recommended in 2005 by the reform recommendations which I have mentioned, section 23 of Bill 51, if implemented, presents a real risk of both harm to the environment and poor planning and development of energy undertakings.

Let me speak from the heart. It also has great potential to do irreparable harm to Ontarian’s sense of equity and the sense that there is a meaningful role for local citizenry in the democratic decision-making process consistent with the best traditions of our political system. A loss of that sense, to be replaced with a sense that the individual citizen has no meaningful role to play in the context of significant local development issues, would be a tragedy and would run counter to our long-standing democratic process whereby the individual concerned citizen does indeed have a right to be meaningfully engaged in decisions which affect her or him. We ask that the potential for harm to our democratic process presented by section 23 be avoided by the deletion of that section from Bill 51. Thank you.

The Vice-Chair: Thank you very much. We have about two and a half minutes for each party. We’ll begin with Mr. Prue.

Mr. Prue: Thank you very much. All but one person commenting on section 23 to date think it’s a bad thing.

I just want to get my head around the two various aspects. We have an environmental hearing dealing with the environment, but the Planning Act goes into a lot more than that. Although it can deal with planning issues, it also determines whether or not it’s an appropriate location for something to be built, whether the infrastructure is adequate, whether or not the community facilities are consistent, whether in fact the town wants it

at all. I understand you're here on behalf of a group that is unhappy about the Niagara Escarpment and the windmills. My own municipality of Toronto, which is coming up next, has opposed the gas-fired generation on the waterfront because that's where they want to build the Expo site, and it's not consistent with the city's long-term proposals. Should a municipality have the right to refuse energy infrastructure if it's not consistent with the official plan of the town or the municipality? Should they have that right?

Mr. MacGowan: I think they should have that right if indeed refusing the proposed undertaking is consistent with the provincial policy statement, but let me just make one point of clarification. I do want the committee to understand that we are not here today in order to voice opposition to any particular project. What we are trying to do is point out to the committee that there is real danger associated with section 23, in that it places reliance on an environment assessment process which has been recognized to be flawed. We believe very passionately that before any such legislative change should be implemented, the reforms which have been recommended to the Minister of the Environment regarding the environmental assessment process need to be paid attention to. Ultimately, I agree that if a project is consistent with the provincial policy statement, it should not be opposed, and in fact the provincial policy statement already provides that by way of the recent amendment that says planning decisions need now to be consistent with the provincial policy statement.

The Vice-Chair: Thank you. We'll move on to Mr. Flynn.

Mr. Flynn: Thank you for the presentation. I enjoyed it and I thought it was quite fair and balanced.

Supporters of this type of move would say that if you don't do something like this, you never get the projects built; everybody just opposes everything off into the future, and decisions aren't made. What would you suggest is a better way of us actually being able to build some of the energy infrastructure that is needed in the province?

Mr. MacGowan: I think the current arrangement, the current system that we have in place, at least in concept is a system that is workable, at a conceptual level. The concern we have is that in its actual implementation it does not lead to the balanced, fair and equitable results that are contemplated by the system design.

My own personal view on this is that we may end up with large-scale turbines on top of the Niagara Escarpment. Personally, I disagree with that, but if that is the end result that is ultimately achieved, I can live with it, as can my fellow residents, as long as the process that has been followed is fair and reasonable. So I think the system we have in place is workable, as long as indeed in its application the local citizens are given the ability to be heard.

If we were sitting here considering section 23 of Bill 51 five years from now, after the environmental assessment reform recommendations that are included in this

report that I've cited had been implemented, then I don't think we'd be experiencing the sort of angst that we are experiencing regarding a flawed process.

1140

Mr. Flynn: Yes. I've just returned from a couple of weeks in Ireland. There are a lot of windmills all over the countryside in Ireland nowadays. I had mixed feelings as to how they looked.

What is it about your site in particular that you're concerned with that is attractive? Is there a lot of wind in that area? There must be something about this application that's compelling.

Mr. MacGowan: Frankly, I think that question is a good illustration of exactly what we're trying to say. I wish I could answer that question, and I feel that I'm entitled to answer that question. I feel that, as a resident of the local community, I'm entitled to that type of information from the Ministry of the Environment, from the project proponent. Instead, I'm having to say to you that I don't know. I can tell you that it's difficult to keep drifted snow blown out of my lane in the wintertime, but apart from that, I can't give you a scientific, fact-based response. I should be able to, because the ministry and the proponent should be sharing that information with me, but they're not.

The Vice-Chair: Thank you. We'll move to Mr. Hardeman.

Mr. Hardeman: Thank you very much for the presentation. As my colleague from the New Democrats pointed out, section 23 has received, I suppose, more debate than any other section of the bill at this point, almost everyone objecting to it. The question really becomes, first of all, what's the need for it? If municipal decisions have to be consistent with provincial policy, why can the province not put a policy in place as to where these types of facilities can go, and then the planning would automatically fall into that category? Municipalities would then look at the application based on local land use planning matters, as opposed to whether they want it or don't want it at all, because provincial policy says it can be in those areas. Would that solve some of the problems?

Mr. MacGowan: I think that would go a long way towards solving the problems, on the assumption that the public is actively and in a meaningful fashion engaged in that policy development process. Again, I could cite numerous examples of disillusioning experiences that we have had over the past few years trying to contribute to that process—which I agree is extremely important—but running into a brick wall or apparently running into a brick wall, even though we feel we are blessed with a very valid environmental concern, i.e., protection for the Niagara Escarpment landscape for future generations of Ontarians.

Mr. Hardeman: Could I ask you one other question, your opinion on it? Why is it, you believe, that the government would put something in place that says no land use planning hearing has to be held and no municipal involvement in siting a nuclear plant, but there will be

land use planning for a refinery? Why would you separate those two?

Mr. MacGowan: I'm sorry. Separating a nuclear facility from—

Mr. Hardeman: A nuclear facility under this act is exempt from the Planning Act; an oil refinery is not. What's the difference?

Mr. MacGowan: I don't see a rational conceptual basis for drawing a distinction. I recognize the importance of solving the energy crunch that we're facing in Ontario. I just feel there's a better way to do it which is heavily engaged in public consultation. Ultimately, the people who consume energy are people like me. Politicians make policy to solve the problems that people like me face when we turn on the switch and the light doesn't come on. If I'm going to be a part of solving that process—and I should be a part of solving that process—I should be actively engaged in the policy formulation process.

The Vice-Chair: Thank you very much for your presentation. Thank you for attending here today, and have a good day.

Mr. MacGowan: Thank you to everyone for your attendance and your attention.

CITY OF TORONTO

The Vice-Chair: Next we have the city of Toronto. Welcome. As with the other deputations this morning, you have 20 minutes. If you don't use the full 20 minutes, we will split the time between the three parties. Please state your name for Hansard before your presentation.

Mr. Ted Tyndorf: Thank you, Mr. Chairman. Good morning, members of the committee. My name is Ted Tyndorf. I'm here on behalf of the city of Toronto. I'm the chief planner and executive director of city planning.

Thank you for the opportunity to appear before you. It's an especially important time for land use planning in Ontario, with so many important legislative reforms reshaping the planning practice, including Bill 51 and Bill 53, the Stronger City of Toronto for a Stronger Ontario Act.

Mayor Miller presented the city's comments on the planning authorities of Bill 53 at the Bill 53 standing committee hearings. I'm here today to express the city's support for Bill 51 and to request the committee to consider some further changes to this bill to better reflect land use planning needs, priorities and practices in the city of Toronto, and indeed in the rest of the province.

The province's growth management objectives will be served best by local governments having the right planning tools to enable strong and sustainable communities to flourish.

Before I begin, I'd like to congratulate Premier McGuinty and Minister Gerretsen for their leadership in recognizing the need to empower and better prepare Ontario's municipalities to manage the significant environmental, social and economic challenges and oppor-

tunities presented by urban growth and development. This bill marks a historic milestone in the evolution of Ontario's land use planning process. Bills 51 and 53 and the Places to Grow Act have responded to many of the key issues regarding planning and OMB reform which have been consistently identified by Toronto city council in its reports and recommendations to the Minister of Municipal Affairs and Housing over the last couple of years.

Specifically, Bill 51 will redefine the role and scope of the Ontario Municipal Board; it will provide municipalities with the tools, powers and responsibilities needed to address the challenges associated with managing growth and development; it will provide an environment for an informed and well-documented municipal decision-making process and outcome; it will clearly state provincial interests in sustainable development and compact growth; and it will enhance requirements for public notice, information, consultation and engagement.

The city of Toronto supports these reforms and many of the provisions and requirements contained within Bill 51 around such matters as pre-consultation, clarifying provincial interests, parkland dedication, enhanced subdivision control and community consultation.

The city also supports the provisions concerning official plan and zoning bylaw reviews, although the requirement to bring the zoning bylaw into conformity with the official plan within three years of an official plan review will present significant challenges for the city of Toronto, with our inherited zoning complexities. Indeed, a similar issue will probably present itself in other municipalities across the province.

The city also strongly supports the provisions which protect employment lands. The elimination of the right of appeal to the OMB of employment land conversion applications that have been refused by the city council and the provincial definition of "area of employment" greatly reinforce the city's ability to protect its employment land base to accommodate future jobs and to grow the city's economy.

As with any new legislation, however, there are certain aspects of Bill 51 which could be improved to better reflect Toronto's planning context and the land use planning needs of Ontario's municipalities. These matters include OMB reform, complete application requirements, the exemption of energy undertakings from the planning process—I'm sure you've heard a lot of that already this morning—and official plan conformity with provincial growth plans. As well, an issue raised by the city in the context of Bill 53 could be addressed in the context of Bill 51 to the benefit of all Ontario municipalities. The ability to secure matters or conditions in binding legal agreements that can be registered on title for all powers regulating land use activity is an important tool which currently only applies to certain powers.

I'll briefly outline the proposed changes.

Regarding OMB reform, the city of Toronto council adopted the following recommendations regarding the reforms that were conveyed to the Minister of Municipal

Affairs and Housing as part of the planning and OMB reform stakeholder consultation sessions during the period leading up to Bill 51: first, that the OMB become a true appeal body and not a substitute decision-maker; second, that *de novo* hearings should only be held under certain and specified circumstances; third, that there should be a leave-to-appeal process; and finally, that grounds for appeal be limited to council acting “unreasonably” or in a manner not consistent with the provincial policy statement or any other provincial plans.

The reforms contained in Bill 51 do establish a higher standard for decision-making at the municipal level and modify the scope of the OMB’s decision-making process. Bill 51 requires that the board shall “have regard to” council decisions and any supporting information and materials that council may have considered in making its decision. Bill 51 empowers municipal councils to require that development applicants provide all and any information council believes is necessary to make an informed decision at the front end of the approvals process.

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These are welcome reforms, but they’re not as fundamental as had been advocated by Toronto council in its submissions. So Bill 51 falls short in making the OMB a true appeal body.

We respectfully request that the OMB process be further circumscribed to be a review or a true appeal of municipal planning decisions only, and that there be a leave-to-appeal process and that grounds for hearings *de novo* be limited only to council acting unreasonably or in a manner not consistent with the provincial policy statement or not in conformity with provincial plans.

Regarding complete applications, under Bill 51, once official plan policies are in effect outlining what is meant by a complete application for all types of development applications, council will be able to refuse to accept or to further consider these applications until all information or materials that it considers necessary have been received. Until council is satisfied that the complete information and fees have been received, the legislated timeframes for processing the application will not commence.

During the Bill 51 consultation period, the city of Toronto advised that the requirement to establish complete application information policies in an official plan was not compatible with the strategic high-level nature of Toronto’s official plan and was not practical or desirable given the complex and varied nature of applications that we experience in the city.

The difficulty in crafting official plan policies that would anticipate requirements for the full range of application types and situations could result in ongoing official plan amendments to accommodate the variety of circumstances surrounding these various types of applications. This would be especially true given the new right of an applicant to appeal to the OMB for direction respecting the validity of individual complete application submissions. It should be sufficient for the city to pass bylaws setting out application requirements, as has generally already been accomplished through the city’s

Building Toronto Together development guide. An applicant would still have the ability to appeal to the OMB for direction.

We respectfully request that Bill 51 not require the establishment of official plan policies for complete applications.

Regarding binding legal agreements, in discussions of planning powers in the context of Bill 53, dealing primarily with demolition and conversion of rental housing, green roofs and site plan control, the city noted that to be most effective, all powers to regulate land use activity should include the ability to secure these relevant matters in binding legal agreements registered on title. Several powers have this authority, while others do not. We respectfully suggest that Bill 51 should provide explicit authority to allow a municipality to enter into agreements and register such agreements on title for section 45(9), particularly pertaining to minor variance, and section 36, which is holding bylaws.

We also note that in order to derive full benefit from existing powers in the Planning Act allowing for conditions to be imposed as part of minor variance decisions, section 37 bylaws or holding bylaws, these conditions should be considered to be applicable law under the Building Code Act regulation O. Reg. 305/03.

While it is not necessary to require binding legal agreements, section 42 of the Planning Act requiring conveyance of land for park purposes as a condition of development or redevelopment of land should also be considered to be applicable law under the Building Code Act.

Regarding exemption of energy undertakings from the Planning Act, the city has concerns with the provisions of Bill 51 that allow for certain energy projects to be exempt from the Planning Act. OPG and Hydro One are already exempt under the current Planning Act, and Bill 51 will allow new public and private sector energy projects or undertakings to be exempted by way of regulation if they have been through the environmental assessment process.

The evaluation of energy projects solely through the EA process places the focus only on identifying environmental impacts and potential mitigation measures. Land use, site plan and other planning issues are not evaluated, and as such an EA process is not an appropriate vehicle for the identification of planning-related issues. The city’s view is that no additional energy undertakings should be exempted from the land use planning process even if they have been through an EA. Rather, energy undertakings should be subject to an evaluation under the municipality’s site plan control and zoning processes, done in tandem with the environmental assessment.

Regarding conformity of official plans with the greater Golden Horseshoe growth plan, with the approval of the greater Golden Horseshoe growth plan under the Places to Grow Act, 2006, Toronto and other municipalities in the GGH are expected to bring their official plans into conformity with the growth plan within three years. Under the Places to Grow Act, the minister can unilaterally amend a municipal official plan to bring it into

conformity with a provincial growth plan, if a municipality has failed to do so within the legislated time frame. This ministerial amendment cannot be appealed to the OMB. However, if a municipality takes the initiative to amend its official plan to conform with the growth plan, that decision of the municipality can be appealed to the OMB. In our view, that is inconsistent. Such municipality-initiated amendments are undertaken strictly to comply with legislation and should have the same status as the actions of the minister in this regard.

The city of Toronto requests that the Planning and Conservation Land Statute Law Amendment Act be amended to disallow appeals to the OMB of any official plan amendment which was specifically enacted to bring local official plans into conformity with provincial growth plans.

In closing, I'd like to reiterate the city's support for the objectives of Bill 51 and most of the requirements and provisions. As I stated earlier, Bill 51 and the recently passed Bill 53 are historic milestones in the evolution of Ontario's land use planning process. Both bills have come a long way to responding to many of the key issues our council has consistently identified in its reports and recommendations. That being said, the city does have some concerns about some of Bill 51's provisions, and I've outlined those matters which we feel require further amendments to better reflect the city's needs.

On behalf of the city of Toronto, I want to thank the committee for its attention and careful consideration. We look forward to continuing to work with our provincial partners as Bill 51 moves through the legislative process, and to providing specific comments to your staff regarding the regulations that flow from Bill 51 and Bill 53.

As a final note and completely unscripted, I just wanted to commend the work of the OMB chair, Marie Hubbard, in the conduct of the hearing on our official plan. Her work has been exemplary and we appreciate all the effort that she has put in to making our official plan what it is today. Thank you very much, Mr. Chairman.

The Vice-Chair: Thank you very much. We have about two and a half minutes for each party.

Mr. Sergio: Mr. Tyndorf, thank you for coming down and making a presentation to us on behalf of the city of Toronto. Bill 51, considering it deals mainly with changes to the Planning Act and so forth, does mix with other ministries as well and the Ministry of Energy is one of those. We have heard our fair share with respect to that, but not from too many planners. We had AMO, we had some mayors, we had some councillors but not too many planners. They don't like Bill 51 or dealing with planning issues? But I'm pleased to see you as chief planner for the city of Toronto.

Just a couple of quick questions, if I have the time. Can you dwell on "the strategic high-level nature of Toronto's plan"? What do you mean by that?

Mr. Tyndorf: The official plan for the city of Toronto, the one that has been recently approved through the Ontario Municipal Board process, takes a very

different approach to land use planning. It is a strategic document which is very different from the preceding official plans, which were very, very specific and contained a whole host of very specific details, most of which had to be amended for every application that came forward, which underlined the whole notion of having an official plan.

Mr. Sergio: Which other municipalities don't have, right?

Mr. Tyndorf: Well, I'm not—

Mr. Sergio: It's different?

Mr. Tyndorf: I can't speak to all municipalities but I do know that our official plan is different from most in that it does not contain any numbers, for example. The only numbers that it has in it are growth targets that were established through the Minister of Municipal Affairs for population and employment. Beyond that, there are no numbers, and that I think is unique in the province.

Mr. Sergio: Receiving rezoning applications with minimum information: We have heard from other presenters that applicants provide just a bare minimum of information. How do you deal with applications like that?

Mr. Tyndorf: At the present time, we are required to accept those applications that meet the minimum filing requirements. We then attempt to receive or obtain various other reports, whether they're traffic impact studies or certain environmental studies. More often than not we get them, but occasionally we get them very late in the process to the point where we may not receive all of the information that we need until the matter has been appealed to the Ontario Municipal Board. It makes it virtually impossible for a local council or a local community to be well informed as to the impacts of all of those development applications cumulatively as well as individually. To have a complete application package is something that we've been striving for, but without legislative authority we cannot require it.

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The Vice-Chair: Mr. Hardeman.

Mr. Hardeman: A couple of questions: One is the issue of not being allowed to appeal the changes to the official plan as they relate to the Ontario growth plan. It would seem to me that the only time one would appeal that is if it doesn't comply with the growth plan; the city thinks it does but someone else doesn't. That would be an appeal. Isn't there a need for that to be in place?

Mr. Tyndorf: I'm not sure. If the minister has the authority to amend the official plan to do exactly the same thing, it seems to me that the municipality should have that same protection. We are complying with provincial legislation, we are not setting new rules, so to go forward to an Ontario Municipal Board hearing bearing the costs of the hearing as well as the burden of responsibility and proof to justify, potentially, the provincial policy statement itself—remember, this is a hearing *de novo* as it's currently structured—means we are liable for questions coming from all sorts of different quarters. I think that's inconsistent with the intent of the legislation.

Mr. Hardeman: The second one is with the function of the Ontario Municipal Board and the request to change that to being strictly a review of the municipal decision. I would think that if they're obligated to make sure that the municipal decision is consistent with or they have regard to the decision, and the municipality must be consistent with the policy statement, no new evidence can be presented. So they're going to hear exactly the same information that was heard at council. What more could be done to make it just a review of the municipal decision?

Mr. Tyndorf: There is a process that we call a "leave to appeal" process. That would be a potential appellant bringing forward a case to a panel—regardless of whether you call it the OMB or whatever—to say that city council did not follow its own rules, acted unreasonably or is in violation of some other provincial mandate. At that point, the panel would make a decision as to whether they felt the appeal had merit or not. If it had no merit, that's the end of it. If it had merit, then it proceeds to a further hearing. That's similar to the practices you would find in court as well.

Mr. Hardeman: Would the OMB not be obligated to look at the decision, not only at the process of what city council had gone through, but whether in fact it is consistent with provincial policy statements?

Mr. Tyndorf: I think that would be part of the leave to appeal process. Appellants would make their case. The city would have a reply case strictly on that basis, not a hearing de novo starting from scratch, where the board then substitutes its opinion and decision for what the council's opinion and decision was.

The Vice-Chair: Thank you. Mr. Prue?

Mr. Prue: A few questions: The first one has to do with the zoning bylaw conformity. How long do you think it will take for the city of Toronto to get its OP and zoning bylaws into conformity? I know this is a horrible thing, because amalgamation made it—I don't think most of them are in conformity yet.

Mr. Tyndorf: We're getting there very slowly, in bits and pieces. At the present time, the city of Toronto is covered by somewhere in the range of 35 to 40 separate zoning bylaws. We have an ongoing project, which has been in effect for almost three years, dealing with the creation of a new zoning bylaw. We have made significant progress but we have not gotten to the point yet where we are changing zoning of individual properties. There are over half a million individually assessed properties in the city, and we would have to go through each and every one of them to ensure that we haven't violated the rights of those property owners. To ensure that we're bringing the bylaw into conformity in three years at this point looks like an impossible task, from where I sit.

Mr. Prue: So if the government or we were to move amendments, what would you think? Could it be done in a 10-year period—15, 20?

Mr. Tyndorf: I think after our first crack at the new zoning bylaw, we would probably be in a position to do it within the five-year period. But at the present time, we're

looking at probably another three to four years before we're complete on this initial, new zoning bylaw process. So if the legislation is adopted the way it is now, we would not be in compliance with the legislation in three years' time.

Mr. Prue: All right. So we need an amendment maybe to make Toronto 10 years? Three plus five, plus two to spare.

Mr. Tyndorf: I'm not sure what the number is, but it's something that we could certainly give some thought to and provide some more information on.

The Vice-Chair: We'd appreciate that. Thank you for your presentation, and have a good day.

To the committee, I just want to draw your attention before we recess—we will be recessed until 1:30—to a presentation on your table from John Sewell, who'll be making a presentation by teleconference this afternoon. Also, from Mr. Richmond, the research officer, we do have, as he pointed out, a current copy of the table of contents of the Planning Act with all parts and sections identified. That's been attached with a memo from him. That should help us as we go through these hearings and go to clause-by-clause.

Ladies and gentlemen, committee, we stand adjourned until 1:30 in this room.

The committee recessed from 1206 to 1331.

ONTARIO NON-PROFIT HOUSING ASSOCIATION

The Vice-Chair: I would like to call the afternoon session to order.

First, we have the Ontario Non-Profit Housing Association; I believe three representatives from the association. Please make yourselves comfortable. There is water over at the side, should you need it. You will have 20 minutes for your presentation. Should you not require the full 20 minutes, we will take the remaining time and split it between the three parties. One other thing: For those people speaking, before you speak the first time, please state your name for Hansard. Welcome.

Mr. Sharad Kerur: Thank you very much, Mr. Chair and members of the committee. My name is Sharad Kerur and I'm the executive director of the Ontario Non-Profit Housing Association. Let me thank you on behalf of the 760 non-profit housing corporations that make up the Ontario Non-Profit Housing Association for giving us this opportunity to be here and to present our members' views.

With me here today on my left is Mr. David Peters, special adviser on housing policy for our association, and on my right is Mr. Paul Dowling, who is a member of the HomeComing Community Choice Coalition, an organization created in 2003 to promote the rights of people with mental illness to live in the communities of their choice.

The members of the Ontario Non-Profit Housing Association develop and provide affordable housing for a variety of populations, such as low-income families,

seniors, persons with disabilities, the formerly homeless, those who are considered hard to house, and those who suffer from mental health and addiction issues. However, as part of the development process, our members must often unnecessarily appear before the Ontario Municipal Board on claims of improper planning matters, despite having received approval from the municipality. All too often, these claims are merely a sham to mask other issues. Remove that mask and one finds not an attempt to deal with legitimate planning or zoning concerns, but illegitimate and unfounded discrimination aimed at people-zoning. Such activities result in having to unnecessarily incur higher, unpredicted legal costs which invariably must be borne by the taxpayer. Our interest is not to subvert a process where legitimate planning issues can be raised and addressed. Our interest is to ensure that such a process is not misrepresented in favour of something it was never intended to be.

Everyone will agree that affordable and supportive housing is a tremendous asset to all communities and that ensuring a planning process which facilitates rather than hinders good development is a necessity. The paper we are tabling with you here today offers a series of recommendations in nine different areas dealing with both amendments to the Planning Act and reform of the OMB that we are confident will strengthen the planning approval process.

I'll now ask Mr. Paul Dowling to start with our recommendations.

Mr. Paul Dowling: My name is Paul Dowling. As you are well aware, there are far too many people in Ontario who do not have decent, affordable homes to live in. Far too many people are homeless or live in housing which does not meet their needs, which is substandard or which costs so much that the people have no money left for food and other necessities of life.

After a 10-year-long drought, we are very pleased that all levels of government have now, in recent years, recommitted themselves to addressing the needs of these citizens through a range of government-funded initiatives to promote the development of affordable housing. We now have a new federal and provincial affordable housing program. The municipalities which are delivering the program are making additional contributions, and non-profit housing providers across the province are gearing up to build the much-needed housing for families, seniors and people with a wide range of special needs.

Unfortunately, once funding has been committed and a suitable location has been found on which to build the housing, the housing provider comes face to face with the planning process, and that's when things begin to slow down. In the community meetings which are required under the Planning Act and at municipal councils, housing providers must often deal with concerns about the proposal which can delay and sometimes stop their planned developments. Recently a housing provider in Toronto proposing a 30-unit project to provide supportive housing for people living with mental illness was taken to the Ontario Municipal Board by the local residents'

association based on concerns about concentration of assisted and transitional housing. I'll quote: "Housing for persons with little or no disposable income is causing the destabilization of the neighbourhood." The OMB eventually ruled in favour of the development, but only after six months of delay, a three-week-long hearing and a legal bill which totalled in the hundreds of thousands of dollars. What a waste of time, resources and taxpayers' money.

We recognize that there are legitimate planning issues which need to be addressed, such as density and parking. We recognize that it is important to consider how the physical structures will affect others who live nearby. All too often, however, the concerns that are raised are about the people who will live in the housing and the perceived impact that they will have on the community because of their poverty, their disabilities and other life circumstances. ONPHA believes that to seek to exclude a housing development because the people who will live there are poor or live with disabilities is discrimination. There are far too many community meetings at which people have raised concerns about the introduction of supportive housing into their community. The way in which people who live with mental illness are described can be very hurtful. I've heard them referred to as rapists, murderers and pedophiles.

Out of ignorance and fear, neighbours demand to know the diagnoses of the people who will live there. Others bluntly say that they "just don't want those people here." Others express concerns about concentration, saying that the neighbourhood already has enough problems; the community has more than its fair share of people with mental illness or people living in poverty.

Can you imagine if people were to say, "This neighbourhood already has more than its fair share of Jews," or, "We don't want more black people here," or, "There are not enough services in this community to meet the needs of Chinese people; they should go somewhere else"? We all recognize those statements as discrimination, and we know that they are unacceptable, yet the same things are said in planning meetings every day about people living with disabilities and people living in poverty.

As you know, the Ontario Human Rights Code says that every person has a right to equal treatment with respect to the occupancy of accommodation without discrimination based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability or the receipt of public assistance. ONPHA looks to the government of Ontario to provide leadership in response to discriminatory community opposition, and we look to this legislation to be an important tool in the provision of that leadership. The Planning Act needs to be amended to explicitly name human rights as an objective of good planning.

The proposed bill provides that decisions of all bodies making planning decisions shall be consistent with provincial policy statements and provincial plans. ONPHA is

very supportive of this provincial leadership in key policy areas. Given the historical tendency to permit discriminatory community resistance to colour planning decisions, ONPHA recommends that the amendment to the Planning Act provide that planning decisions must be consistent with the Ontario Human Rights Code.

The existing Planning Act states that plans must "have regard to" disabled persons' concerns. The Ontario Human Rights Code states that agencies providing services must accommodate disabled persons to the point of undue hardship. ONPHA suggests that consideration be given to the implications of holding planners to the same higher Human Rights Code standard.

Many Ontario communities have provisions in their zoning bylaws which restrict the location of group homes. The definition of the group home usually includes a description of the people who will live in the group home, based explicitly on the disabilities that they have. Group homes are then required to be separated from one another. To understand the impact of such provisions, I ask you to imagine a bylaw which reads, "Houses providing accommodation for black people must be separated from other houses providing accommodation for black people by at least 500 metres." The intent is to avoid overconcentration of uses and people who are seen to have a negative impact on the community.

1340

In the United States, the Fair Housing Act prohibits discriminatory provisions in planning tools like official plans and zoning bylaws, including such things as people zoning, distancing requirements, the preservation of family character of neighbourhoods, differential standards, neighbourhood consultation and two-tier approval processes. We recommend that the amendments to the Planning Act should also incorporate similar prohibitions.

Fair housing provisions would differentiate between bona fide planning issues and attempts to exclude people because of prohibited grounds for discrimination. The provisions would prohibit the establishment of official plan policies or zoning bylaws which require or permit more onerous processes based on the characteristics of the people to be housed. Finally, fair housing provisions in the Planning Act would, as it says in the US joint statement of the Department of Justice and the Department of Housing and Urban Development, make it "unlawful to refuse to make 'reasonable accommodations,' (modifications or exceptions) to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use or enjoy a dwelling."

Mr. David Peters: My name is David Peters, with the Ontario Non-Profit Housing Association.

This bill is an interesting example, I think, of the Legislature's and the government's continual attempts to find a balancing act between the collective interests of society and the individual interests of both individuals and neighbourhoods or smaller components of society. It's a companion piece to the provincial policy statement,

which was strengthened, the Strong Communities Act, the growth plan for the Golden Horseshoe, the new City of Toronto Act and several other initiatives.

It's an attempt to allow more latitude for municipalities to govern planning matters, so there are decentralization elements to it, but there are also components that are trying to strengthen the reinforcement of some collective interests that probably need more support than they used to.

The ability of our society to ensure that it's relatively easy to include affordable housing in communities is increasingly important, and you've heard my colleague speak about the various NIMBY issues that can get in the way. We think it's time to, in effect, strengthen the collective interest and ability to deal with these kinds of illegitimate and discriminatory behaviours. The environmental and sustainability arguments that you cite in the beginning of the act for intensification are pretty well accepted now. The need to house and integrate large immigrant and aboriginal communities in order to deal with the demographic issues that are coming our way and attach those communities to jobs is a crucial element in our ability to succeed and continue as a viable society. We also need to support the government's agenda to move more individuals and families out of expensive institutional settings such as psychiatric hospitals and long hospital stays into community settings, which we often in our world call supportive housing. These are all very important elements of the collective interest and we think we'll require some strengthening of the ability to enforce that.

The provincial policy statement of 2004 was a big step forward, but we still think the provincial interest in affordable housing could be stated more vigorously as a companion piece to the increased decentralization of planning decision-making. We speak in the brief of dealing with the full range of affordable housing, which includes social and special-needs housing, a full range of housing types, affordability and tenure, and permanent special-needs housing. This isn't really part of this act, to be honest with you, but we want to mention the fact that that's an area in the provincial policy statement that we think needs strengthening as part of the overall objectives that we're working toward, and it needs to be more explicit. We also believe the province should make inclusionary zoning legal and permit municipalities to use this tool to implement their housing policies.

The city of Toronto now, in its official plan amendments, is doing that. The official plan folks in Ottawa backed off it because the legal advice was that their ability to do that was not clear in law. So we think inclusionary zoning should be clarified; it's uncertain as to its status at this point in time. Inclusionary zoning is where you require a large development to include 25% of its housing as affordable housing—for example, at Donmount, the west lands and so on.

With respect to local appeal bodies, moving decision-making closer to the front line is something ONPHA supports, but the outcomes must be efficient, timely and affordable, and the appeals process must be independent.

So we're recommending that the Planning Act include the provision for appeal to the OMB if the local appeal body does not hear an appeal within a predetermined time—I think you've heard that from a number of deputants—and that this provision should be part of an overall framework of performance standards set by the province. In other words, the decentralization is a good idea but it needs to be in a context of performance standards.

We recommend that the exclusion from membership on local appeal bodies include persons who, by nature of their work or business, may be dependent on the goodwill of the municipal government for their livelihood. These would be housing/land developers, planning consultants and so on.

We also note that the current wording says the municipality only has to "have regard to" the prescribed provincial eligibility criteria, which we think is weak. We would recommend that the province appoint the members of the local appeal boards on the recommendation of the municipality and therefore do a weeding function.

With respect to the process, we've already spoken about filtering out illegitimate, discriminatory NIMBY objectives. I won't go into the logic. It has been well spoken about already.

We recommend that the Planning Act, subsection 17(45), allow the OMB to dismiss all or part of an appeal without holding a hearing if it is of the opinion that the appeal is based on discriminatory grounds or is tainted by discriminatory behaviour by the group in opposition. Additional evidence suggesting such a pattern should be admissible even if it has not been heard at the municipal level, and when the evidence of discriminatory NIMBY is not conclusive, the OMB should at least be able to send back the appeal for a rehearing. We also recommend that the claims of discrimination should be dealt with in a prehearing process.

With respect to the rules of evidence, one universally acknowledged abuse of the system is the ability for developers to run the clock on the 90-day rule; they would submit an incomplete application and then 90 days later take it to the OMB, where they think they might get a better shake. You've wisely dealt with that and the government has wisely dealt with it in its application by making the ruling that there will be no additional information or evidence brought at the OMB level other than what was before the municipality.

We think this will significantly increase costs. Funnily enough, one development lawyer told us this was the best thing to happen to their profession in a long time, because they would now have full hearings for every single one rather than just the ones that went to the OMB.

We recommend that the OMB be empowered to review the evidence and make its own decision based on the Planning Act, the provincial policy statement and the official plan and other planning-related law and only have regard for the municipal decision if the municipal decision is consistent with these contexts.

We also recommend—and I think this is important and may be consistent with some of the other deputants—that

the Planning Act not only provide for the municipal capacity to define the requirements for a complete submission but actually require it so that everybody knows what they're supposed to do. At the moment, it's set up as a municipal empowerment rather than a requirement.

With respect to the Planning Act, we would establish a limit on the number of mandatory community meetings that a developer can be required to hold, and that limit should apply to all developers. The bill adds in one more open house meeting. Our experience has been that open house meetings are actually better than public meetings. Public meetings can get pretty rough and frankly weird, with all sorts of people saying all sorts of incredibly inappropriate stuff and untrained chair folks having a hell of a time trying to arbitrate and manage the meetings. Sometimes the chairperson is shouldered aside by the local councillor, who feels he's the person who should have the public face in the neighbourhood—fair enough in some respects, but not necessarily leading to a well-chaired meeting. So we recommend that the Planning Act establish a limit on the number of mandatory community meetings that a developer can be required to hold and that the limit should apply to all developers.

Sometimes people will say to one of our supportive housing providers, "You know what? You've got a pretty challenging project. Maybe you should have three meetings and really make sure everyone understands it." In fact, it doesn't lead to greater understanding; it just leads to a giant amount of vitriol and more divisiveness in the community.

As far as the right to appeal, recognizing the collective interest, Bill 51 will not allow appeals when a local municipality introduces as-of-right zoning for second suites. We applaud that step. It's a good example of strengthening the collective interest. We would apply the same thinking to official plan provisions and promote the development of affordable housing and the protection of human rights. Ultimately, as a society we have to accept that our larger collective interest in intensification and the protection of farmland, combined with the fact that integrated communities that include immigrants, low-income people, renters, homeowners and those who used to live in obsolete, expensive institutions are the basis of successful neighbourhoods. I think it was Jane Jacobs who said once that as the neighbourhoods go, so go the cities, and as the cities go, so goes the country. Thank you.

1350

The Vice-Chair: Thank you very much for your deputation. We have about a minute and a half. Just a very quick question from each—very quick.

Ms. MacLeod: I want to thank you very much for your deputation. I thought it was very interesting. It brought a whole new perspective from what we've been hearing, and I'm quite pleased to talk to you a bit about rules of evidence. My community has Nepean Housing, which is a very progressive not-for-profit housing organization, which I'm sure you're very well aware of. Lynn Carson is doing a great job there.

Rules of evidence: If this is passed the way it is, can you tell me what the costs will be—financial and on time limits—to people in terms of what a unit might cost, if it will cost more, and how much longer it might take to get somebody into a unit if everything has to go through council?

Mr. Peters: We don't have an exact process there. On the one hand, it will be probably less expensive than a full OMB hearing. On the other hand, it will depend on the extent of the conditions that the local hearing body establishes. If there are illegitimate processes that get to the OMB and then are sent back, that will extend the cost.

We thought about this, and our people said, "This might be too expensive for our folks." Well, it's too expensive as it is. If our recommendations are followed, and even without them, the process will be somewhat fairer than it is now. It's simply going to be the job of the government and the programs it has set up for affordable housing to accommodate any additional costs to ensure that a fair process results.

The Vice-Chair: Mr. Prue, a quick question?

Mr. Prue: I don't know how quick it can be. I think, to be fair, I can't ask a question in that short period of time. Go ahead.

The Vice-Chair: Okay. Do we have a question over here?

Mr. Sergio: Just a quick one. Out of so many, I'll put the easy one. Local appeal bodies: Let the province do the appointments upon the recommendations of the local municipality. Why would you recommend that?

Mr. Peters: Well, our experience has been that a third party will probably be better at ensuring absolute independence. Those local bodies have to be independent. At the moment, the rule is that the municipality only has to "have regard to," which, as you well know, is the weaker of the possibilities.

When I was with the province at the Ontario Housing Corp., the local housing authorities were appointed by the province. It wasn't well regarded in a decentralized world. When the devolution of housing took place, the local housing authority boards were appointed by the province on the recommendation of the municipalities, and very few of their recommendations were overturned. But there were a few real ringers that were caught and weeded out of the process, so we think it's a good process.

The Vice-Chair: Thank you very much for your deputation this afternoon. Have a good afternoon.

JOHN SEWELL

The Vice-Chair: Next, we have John Sewell. He will be with us through a teleconference. Good afternoon, Mr. Sewell.

Mr. John Sewell: Good afternoon to you.

The Vice-Chair: Do we have Mr. Sewell?

Mr. Sewell: Yes. Hello? It's John Sewell here.

The Vice-Chair: Can the committee members hear?

Mr. Sergio: We can hear him but we can't see him.

The Vice-Chair: No, you won't be seeing him. It's just an audio.

Mr. Sergio: I realize that.

The Vice-Chair: You will have 20 minutes for your presentation, Mr. Sewell. Should you not require the 20 minutes, I will divide the time up among the three parties, and we'll be starting off those questions with the New Democratic Party. You have the floor.

Mr. Sewell: Thank you very much, Mr. Chairman, and thank you for hearing me by telephone. I'm actually in Temagami at the moment. It's a nice, warm summer day here.

I will be relatively brief, and I want to restrict my comments to the sections of the bill regarding the Ontario Municipal Board Act. I know there are other changes being made in the bill that are useful, but I want to focus just on the OMB.

There are two suggestions in the bill for change to the OMB. The first is in section 3, indicating that the OMB "shall have regard to" the decisions of the municipal council. My experience is that's exactly what the OMB does now. There's always somebody at the board who is arguing on behalf of the municipal decision, so in fact the OMB must have regard to the current decision. That really doesn't change very much. I do want to point out the irony of the fact that the words "have regard to" are considered to be so weak that the provincial government, of course, has changed them in respect to provincial planning statements so that now decisions must "be consistent with" provincial policy statements rather than have regard to them. In any case, I don't think that's a change of any great seriousness.

Secondly, there are a number of sections in the bill—subsection 14(13) is one; subsection 8(9) is another—which state that except under limited circumstances, information not provided to council shall not be presented to the OMB. I would point out that in my experience this poses no impediment to developers, who currently swamp council with their many reports, but in fact it's a very serious limitation on community groups. Community groups only go to the Ontario Municipal Board after they've found that council has done something that they think is inappropriate, and it's at that point that they usually do a big fundraiser, hire a planner and go to the board. But if this new section is put in place, then community groups will be in a position that they won't be able to do that. I think the likelihood of community organizations raising money to hire a planner to give evidence to the municipality is very, very small. So this is something that disadvantages community organizations. I'm not sure that the government's drafter realized that at the time, but it is not a helpful change.

During the last year, I've been representing a number of community organizations and individuals at the board. I found it a very interesting and disillusioning experience. Citizens are at a great disadvantage before the board, mainly because the board seems to have no problem in scheduling very, very lengthy hearings that the community groups can rarely afford to participate in. They

can certainly not afford to hire legal representation for those hearings since they go on for two, four, five weeks and in many cases many weeks longer than that.

I've been thinking about how one might deal with those kinds of situations and I've been trying to look at how you might restructure the board, because I believe that having the board is a good idea, in order to ensure that people are not disadvantaged. I think that there are two major changes that should be made, and should be made in this bill.

The first is that the bill should be restructured to restore democratic accountability in planning decisions so that the key decisions are in the hands of the council, for better or for worse. I think the way to do that is to say that the OMB will only act as a review or an appeal body that intervenes when municipal decisions are contrary to either municipal or provincial policy or the process is unfair. I think they should be the only grounds for a successful appeal. The board would receive an appeal and would say, "Is this appeal specifying that the decision is contrary to municipal policy or provincial policy or is the process unfair?" If it found that any one of those things was the case, it would return the matter to the council for further consideration. That's one change I think should be made. I suspect that change can be made to section 3, an addition to section 3 of the bill.

Another big problem, probably the most serious problem—and it's not of the OMB's making, although it comes out at the OMB—is the fact that there is no secure land use plan in any municipality in Ontario. We know that official plans are meant to be long-range statements of policy to govern councils' decisions, but the rule in Ontario municipalities is, if the official plan stands in the way of what council wants to do, then council amends it. Most municipal councils amend their official plan once every time they meet. Last year, I added up the number of amendments that were made to the official plan for the city of Toronto. The city of Toronto amends its official plan about 10 times a meeting. It has 10 meetings a year. It means that the official plan is amended 100 times per year. Obviously, it's not an official plan at all. It's a bit of a joke. I think we have to start to address this problem. To try to continue to turn a blind eye to it, in my opinion, is wrong. We must address that problem at the same time as we review the OMB's role.

1400

I think the bill should state that a municipal council should not be permitted to amend its official plan more than six times a year, and that any amendment it makes must be in conformity with the general intention of the plan. The Planning Act requires that official plans be updated at least every five years, and so the point is that if the municipal council feels that the official plan does not reflect what they want to do, then they can generally amend the official plan in saying, "We're going to replace the one we've got with something that's entirely different." But it should not be allowed to consistently and regularly amend the official plan the way it does at the moment, which makes a joke of the whole idea of planning.

There are two major changes that I believe should be made to this bill. The first is to define clearly what the OMB is doing as an appeal body, in indicating that it must determine if the council decision is in conformity with the official plan, if it's in conformity with provincial policy, and if the process is fair. If in fact it meets those three tests, then the board confirms the municipal decision, and if it does not, then it should return it to the municipal council for further consideration.

The second thing is that I think there should be a section in the bill which makes it very clear that a municipal council is only allowed six amendments per year to the official plan, and they all should be in conformity with the general intent of the existing plan.

I think those kinds of changes would significantly return decision-making to the municipal council and in fact would then start to put the OMB in a reasonable place where it is not something that's overriding municipal jurisdiction. There the nature changes, I would suggest, from the limited perspective from which I am looking at Bill 51.

Thank you, Mr. Chairman.

The Vice-Chair: Thank you very much, Mr. Sewell. You have left about three and a half minutes for each party. We'll begin with Mr. Prue.

Mr. Prue: John, good to hear from you again.

Mr. Sewell: Thank you, Michael. It's nice to hear from you.

Mr. Prue: I'm a little bit puzzled and troubled by the six times a year, because we have municipalities of many, many sizes. As you rightly point out, Toronto probably makes 100 amendments a year, but that's a city of 2.5 million people. We have towns in Ontario—I often talk about Highlands East, where my parents live, population 2,700 people. I doubt very much that they would ever make six amendments a year, yet they would have, under your scenario, the same rights as the city of Toronto in order to do that.

Can you explain how you think a number of six will work for towns as disparate as Highlands East, population 2,700, and the city of Toronto, at 2.5 million?

Mr. Sewell: Maybe there should be a distinction between the number of amendments and the size of the municipality. I wouldn't have any problem with that whatsoever. So if you want to say that if a municipality has a population of fewer than 10,000, it should only be allowed to amend its plan twice a year, I wouldn't have a great problem with that. What I'm trying to do is to bring a general control and meaning to the official plan so it is not constantly amended, and if what you are saying is that there are so few applications that are put before small councils that they are hardly ever amending their plan, then I have no question of reducing the number according to population.

Mr. Prue: I'm also intrigued—and I agree with the position that you're taking on the right of the Ontario Municipal Board to overturn a decision of the local council where it is contrary to the municipal principles, contrary to the provincial principles, or is manifestly

unfair. Do you think that there are any other reasons, other than those three, by which the OMB might overturn a development if it's unfair? What if it was contrary to law?

Mr. Sewell: Contrary to law? I guess the question is, what law would it be contrary to? The two big laws that control planning decisions are official plans and provincial policy statements. I'm not sure there are other laws which municipal—I don't know. If you wanted to add something about "contrary to law," I guess you could. I'm not sure what you mean. I was thinking, in listening to the previous deputation, about the discriminatory question, but of course that clearly fits in something—the process is unfair because it's discriminatory—so I don't have a problem there.

The Vice-Chair: Next we move to the government side, Mr. Flynn.

Mr. Flynn: Mr. Sewell, good to hear from you again.

Mr. Sewell: Thank you.

Mr. Flynn: Back in 2003, you gave an excellent presentation to the GTA task force on OMB reform on which I sat. Quite often I think you and I share a criticism of the OMB that goes back over a number of years and a feeling that something should be done about it. I refer to the report quite often because it's available on the site for the region of Durham. They grouped all the submissions, and your name appears through it quite frequently and in some positive ways. It appears to me that you asked us to include in our report, which we sent to the provincial government, about 10 items. As I go through the bill that's proposed before us today, I see we've addressed in good measure at least five of those, and another two will be addressed by the Public Appointments Secretariat over the next short while, I hope. Is it fair to say that it's not everything you want but this bill goes a fair way towards the reform we were looking at at that time?

Mr. Sewell: I think probably what's happened is I've changed my position in the last three years, and a lot of that has come from the fact that I've been asked by community organizations to actually take their cases to the OMB because they can't afford to hire lawyers. I used to be a lawyer many years ago but I haven't maintained my status with the law society, so I'm not any more. It means that I've been able to represent people and do the kinds of things that lawyers do for a much less financial hit than organizations would otherwise have to pay. It's in that learning about the OMB that I guess I've changed my mind and realized that in fact one has to start to restrict the kinds of things that the board can do.

If you're allowing the board to go through a whole new hearing process, as they're doing right now, and just starting everything over again, you're into very, very long hearings. There's one case that I'm involved with now where we've just filed the witnesses that we want and the witness statements. There are 58 witnesses. Well, this is going to go on forever. I don't know how a community organization can maintain itself before the board. That's why I think I've probably changed and said we've got to restrict the kinds of things the OMB is actually looking at.

The Vice-Chair: We'll now move over to the official opposition, Mr. Hardeman.

Mr. Hardeman: Good afternoon, Mr. Sewell. It's good to hear from you.

Mr. Sewell: Hi, Ernie.

Mr. Hardeman: I have about three items I just wanted to touch on very quickly. I want to say right up front that I agree with you that the issue of not being allowed to provide any new evidence is going to make it very difficult for the average citizen to appear at the Ontario Municipal Board with a credible defence for their objection because obviously they didn't prepare that when it originally went to council. What I find interesting about it is that the development industry has also put up a red flag on that, because they say that they will have to prepare a much more elaborate case for each application and council will have to spend a lot more time to hear that application because they can bring in no new evidence at the OMB hearing. Could you comment on that just quickly?

1410

Mr. Sewell: My experience with the development industry is that they provide extraordinary reports, very thorough reports, that are filed with staff. They often are not brought to the attention of the members of council because councillors don't read that stuff; that's my experience, anyway. So they've actually filed the material with the municipality. I don't expect that the development industry is going to have to provide new information, but I guess they might be worried about the fact that they're going to try and ensure that every councillor is aware that they've actually filed all that information. There might be an expense to that.

Mr. Hardeman: The other one I just wanted to touch on quickly, John, is the issue of the number of official plan amendments. If you include the fact that every amendment to the official plan must preserve the integrity of the official plan as it was originally written, if each application does that, is there any reason why you'd then want to put a limit on dealing with the intricacies of each application as long as the intent of the official plan is consistent throughout the process?

Mr. Sewell: If the intent of the official plan is consistent throughout the process, I can't see why we would have any more than half a dozen small amendments to the plan. The point is, if you want to have a broad plan that allows all sorts of things to happen, you should have a plan that says that, rather than having a plan that's restrictive, as many are, and is constantly being amended to allow this and then this and then this. So I don't think it makes sense to say that you can have 100 amendments to the official plan and all of them are maintaining the integrity of the plan. There is no integrity to a plan that's being amended 100 times a year.

The Vice-Chair: Thank you very much, Mr. Sewell. I appreciate your deputation here this afternoon.

Mr. Sewell: Thank you for accommodating me, Mr. Chairman; I appreciate it.

The Vice-Chair: I wish you a good afternoon. Thank you.

I just want to remind the committee members and the audience that the video conference, the teleconference, is being recorded by Hansard, so that information will be available, should you require it, in writing.

ONTARIO BAR ASSOCIATION,
MUNICIPAL LAW SECTION

The Vice-Chair: Next we have the Ontario Bar Association. Step up and make yourselves comfortable. There is water over at the side, should you require it. As with the other deputations, you have 20 minutes. Should you not require the full 20 minutes, the time will be allocated between the three parties. When you begin speaking, please identify yourselves for Hansard.

Mr. Chris Williams: Certainly. Mr. Chair and members of the committee, my name is Chris Williams. I'm with the municipal law section of the Ontario Bar Association. I'm a past chair and I'm also on the advocacy and government relations section. With me today is Mr. Michael Stewart; he's a vice-chair of the municipal law section of the OBA.

As the committee may or may not know, the OBA is a non-partisan, voluntary association representing over 16,000 judges, lawyers and law students across Ontario, and we're a part of the larger Canadian Bar Association. The municipal section of which I'm a member, as is Michael, represents over 400 private and public sector service lawyers who represent the various stakeholders involved in the planning and development regime.

I note with some interest that some of the concerns of Mr. Sewell that we heard shortly after we came in may actually be echoed by some of the submissions we're going to make to you today.

Mike and I will divide the presentation into two parts. I'm going to deal with two issues flowing from Bill 51 and Michael is going to touch on OMB reform, which was to have been a part of Bill 51 but which does not seem to have been directly dealt with by that bill.

I should note, Mr. Vice-Chair and members of committee, that our role is not to deal with the policy of Bill 51, but is only to point out legal implementation issues which we think may create some unforeseen problems or may inhibit the full realization of the policy contained in Bill 51.

As the committee has undoubtedly heard and would know itself, Bill 51 effects a number of substantial changes in the planning and development process in Ontario through a very substantive amendment to the Planning Act. It will affect the way that all municipalities and the Ontario Municipal Board carry out their role and will have big implications for stakeholders in the process: property owners, developers, applicants, ratepayers and people like ourselves, the municipal bar. It's very clear that the policy direction is to empower local municipalities to ensure that the fundamental planning decisions are made at the local municipal level while ensuring that

the local municipal level respects the broader policy directions from the province. It also purports to streamline and make the process simpler and more predictable.

One of the ways the local municipal empowerment is to be carried out—I think Mr. Sewell was touching on this when I came in—is through some changes in the rules of evidence before the Ontario Municipal Board. Today, if someone applies to a municipality for a change to their zoning bylaw or official plan and they don't like the decision the municipality gives them or the municipality neglects to make any decision at all, they have a right to appeal that to the Ontario Municipal Board. The Ontario Municipal Board then holds a hearing *de novo*, where what happened at the municipal council level doesn't play in in a big way. The Ontario Municipal Board, when considering the evidence that it views as relevant, wants to have the best and the most fulsome evidence available to it to make its decision on the best planning and policy grounds. So all the parties to a hearing, because this is the adversarial process, will put forward all of the evidence and all of the witnesses they think are necessary to make their case. The OMB likes that because that is how the adversarial process works, and that's how they feel that they get the best evidence to make the decision.

Bill 51 looks to change that in quite a substantive way, by providing that, except for municipalities or other public authorities, if a matter is appealed to the OMB, if the OMB, let's say, doesn't pass a developer's bylaw application or if the OMB does pass a bylaw application and somebody appeals the bylaw—for non-municipalities and non-public authorities, the only evidence the OMB can deal with is that evidence that was before the municipal council. That's a very substantive change in the rules of evidence. We understand what the policy is, but we think that this will have a number of unintended results which will essentially be destructive for the policy direction found in the bill.

If I was hearing Mr. Sewell correctly, one of the problems is that this will practically deny third parties, particularly unsophisticated third parties, access to the OMB, because today, if a ratepayer or somebody wants to object to a development in their community—maybe it's as simple as their next door neighbour doing something—they normally don't engage a lawyer or a planner or a traffic expert or an environmentalist or anyone else until the municipal council has made the decision and it's gone off to the OMB, because that's very expensive. In this case, the individual or the ratepayer group would have to spend a huge amount of money to hire these experts, to marshal the evidence and present it to the municipal council before they ever knew there was going to be a decision that they didn't like. If they didn't do that, they would not have the right to call that evidence at an OMB hearing, and their chance of success would be absolutely nil. It's our position—I think Mr. Sewell was on this same route as well—that this is a real, fundamental denial of justice to the small person.

The second area of concern is that this requirement, in our estimation, may lengthen the municipal process, may

complicate it—it may make life nice for us lawyers—because it's going to make the municipal process very legalistic. If someone is representing a sophisticated third party, someone—maybe a competitor, a store chain that isn't happy with an application a municipality is considering—they who have the ability to retain lots of experts upfront, and for whom for market reasons it may make a lot of sense to do that, will start to make the process at the council much less legislative, much less friendly for the individual and much more like a court proceeding. Undoubtedly, they will want to examine the experts from the other side. They'll want to call witnesses. They may even ask that the proceedings be recorded. There is lots and lots of opportunity to look for procedural errors that might get you into Divisional Court, especially if you would not be unhappy if the application were, if not turned down, at least delayed for a considerable period of time. We think that the policy direction of empowering municipalities, streamlining the process and making it friendlier for individuals will be quite substantially subverted by this well-meaning but we think, perhaps, not completely thought through restriction on evidence.

1420

Our third concern—there is a presentation that you should have received and you'll see this set out probably a little more eloquently than I can do—talks about third parties being able to abuse or manipulate the process. Again, a party may try to judicialize the process in front of council. They may wait until an OMB hearing and request the OMB to allow additional evidence in, and when they were denied that, go off to court. There just seem to be all kinds of ways that a sophisticated party who is determined could use this provision to really slow down the planning process and complicate it.

We've got a concern over that. What we would recommend is fairly simple, that this restriction on evidence be taken out and replaced with a provision that enables the OMB to refer a matter back to a municipality for the municipality to consider and then report back to the OMB, if there is new evidence that the OMB thinks could affect the municipality. In that way, in the situation perhaps described by Mr. Sewell, where sophisticated parties have all kinds of reports which they don't share with the municipal council and suddenly spring them at the OMB, the OMB would be in a position—and in fact, should—to then refer the matter back to council, if there is some new evidence that council should have had but didn't have. The punishment for the party that was holding on to their evidence is (a) they may get a decision they didn't like from council, and (b) things could be slowed down. But in this way, you're not going to punish the small person who wants access to the OMB. You're not going to slow things down—at least, not in the same way—and you're not going to judicialize the process in front of municipal council. This provision, in our estimation, when taken with some of the other changes in Bill 51 and previously in Bill 26, does empower the municipal council as the fundamental planning approval authority.

The second area of concern—and it's a bit of a general bugaboo that we have at the OBA—is the rather generous use of regulation-making authority in Bill 51 where a number of substantive matters are left to the regulations as opposed to being found in the legislation. Those deal with not only transitional matters but local appeal bodies. That's the body that a municipality can elect to replace the OMB for some planning matters and also conditional zoning where very substantive conditions can be attached to an ordinary zoning bylaw. I won't say it's like a tax, but it's becoming very much like a charge. If you go through the list of things set out in a proposed regulation, you'll see infrastructure costs, costs to enhance natural heritage features, road widenings, things relating to parks. You're almost getting into an area that you've covered in DCs, but you're doing it not in the legislation but through a regulation. We have problems where regulations, first of all, set up quasi-judicial bodies such as the local appeal body and, secondly, attach new charges or levies. That should be done in the legislation. If you look at the Planning Act today, all of the conditions for subdivision approval, for site plan approval, are set out in the legislation itself, not by regulation. That's an area that we've got some concerns over.

I'd point out that Bill 51 sets out 19 authorities to make regulations. As I say, there's some prodigious regulation-making authority. One of the problems with that, even if you're not getting into real substantive legislative things like the conditional zoning or the local appeal bodies, is that it makes it very hard for entities such as ourselves to comment on the legislation because a lot of the picture hasn't been presented to us yet. Yes, some proposed regulations have been put on the Environmental Bill of Rights website for comment, but the descriptions of those regulations are so general and so vague it's impossible to understand what they actually mean. I'll use the example of the transitional regulation.

We all know that Bill 51 makes a lot of very major changes to the law relating to planning and development, and if you're an applicant, it may have a lot of consequence when and if that bill applies to you. There are a lot of applications in the pipe and there are a lot of applications coming in. So when the bill applies is important, but from reading the bill and the regulations, it's virtually impossible to tell.

If you go to section 27, it says:

“(1) The minister may make regulations,

“(a) providing for transitional matters respecting matters and proceedings that were commenced before or after the effective date....

“(2) A regulation under clause (1)(a) may, without limitation,

“(a) determine which matters and proceedings may be continued and disposed of under this act, as it read on the day before the effective date, and which matters and proceedings must be continued and disposed of under this act as it read on the effective date;

“(b) for the purpose of clause (1)(a), deem a matter or proceeding to have been commenced on the date or in the circumstances prescribed in the regulation.

“(3) A regulation under clause (1)(a) may be retroactive to December 12, 2005.

“(4) A regulation under this section may be general or particular to a specific application.

“(5) A regulation under clause (1) (a) prevails over any provision of this act....

“(6) In this section,

“‘effective date’ means the date on which section 27 of the Planning and Conservation Land Statute Law Amendment Act, 2005 comes into force.”

That’s very powerful regulation-making authority—and it’s retroactive. Normally, legislation takes effect from the day that it receives royal assent or proclamation. In this case, theoretically the act could take effect back in December, and it could take effect for only one person and not for anyone else. So there is regulation-making authority that the bar association is very concerned with. We don’t like retroactive provisions, but if they’re necessary, they shouldn’t be done through a minister’s regulation where anybody could be singled out for special treatment. It should be set out in the legislation itself. Retroactive legislation should be used only in very rare circumstances. I can understand that there may be situations in dealing with planning and development matters where you don’t want the horse to get out of the barn before the legislation comes into effect, but I think it needs to be thought through very carefully and dealt with by the Legislature and not by the minister through regulation.

1430

To illustrate my point about the Environmental Bill of Rights regulation, I’ll read to you everything that it says about the transitional reg, except for the bump that this has been posted so you can comment for 60 days. It says, “Proposed content: transition. The proposed new provisions of Bill 51 would apply to all applications made on or after the date the legislation comes into effect.” I have no idea what that means. It’s completely unhelpful, and it has led to a lot of misinformation, I think, in the development community, where one of the law firms, Davis and Co., sent a blog around saying that they think it’s going to be retroactive to December 5, 2005. I have no idea, having read through Bill 51 and looked at that regulation, when the heck this bill comes into effect and when applications are subject to it and when they’re not.

Just to wrap up on this part of the presentation—

The Vice-Chair: I would just like to remind you that you have one minute left.

Mr. Williams: We recommend that the regulations be provided to us in full form, that substantive matters not be set out in the regulations, and that any transitional matters be dealt with in the legislation, not in a reg. I’ll turn it over to Mr. Stewart.

Mr. Michael Stewart: I’ll be brief in the few seconds that remain. We have two main recommendations with respect to the Ontario Municipal Board. First, it is our recommendation that the level of compensation and benefits be increased to the level of provincial court justices. Second, we recommend that the initial appoint-

ments to the OMB should be for a minimum of five years, with renewals based on performance and with no overall maximum term limits. Given the time, I’ll limit my comments on the OMB to that.

Subject to any questions, those are our submissions.

The Vice-Chair: Basically, we just have about 10 seconds, so we’re at the end of your deputation. I want to thank you for coming in and making the presentation, and I wish you a good afternoon.

HILDEGARDE REIS-SMART

The Vice-Chair: Next we have a presentation from Hilde Reis-Smart. Welcome. You will have 20 minutes for your presentation. If you don’t require the full 20 minutes, I’ll divide the time for questions among the three parties. There’s water, should you need a glass of water. Please identify yourself for Hansard.

Ms. Hildegard Reis-Smart: My name is Hildegard—that’s the full name—Reis-Smart. Do you need the spelling?

The Vice-Chair: No, I think that’s okay.

Ms. Reis-Smart: I really appreciate being given this opportunity to speak to you. I come to you with limited experience regarding the Ontario Municipal Board and also limited understanding of Bill 51. Perhaps you’ve dealt with the issues that I will focus on and I’ve missed your solutions. If that is the case, I apologize for my failure. However, understanding the bill as I do, I am compelled to speak because of the experience I’ve had before the OMB.

To begin, there are many good and necessary changes in this legislation; for example, the creation of appeal bodies at the city level, stronger protection of heritage properties, requiring complete applications for review, the greenbelt plan and so on. However, there appear to be areas that have not been addressed. Let me begin by relating my OMB experience.

The background on this is that in our neighbourhood, which exists in an older part of the city of Toronto and which is zoned residential R1, single-family dwellings only, and where the average gross floor area is 39%, there exist two duplexes with a total of four apartments on a single lot at a gross floor area of about 95%. It is a legal non-conforming dwelling as it was built before the bylaws came into effect. The owner built four more apartments for a total of eight units without permit in the basement, for a total of 135% coverage; this is in an area that averages 39%.

When the city became aware of the renovations, the owner applied for a variance to legalize these apartments. The committee of adjustment refused the application. The owner appealed to the OMB. The city, reasoning that the site was already over-intensified for a single-family neighbourhood and not appropriate to the zone, among other reasons, felt strongly enough that it defended the denial of the application at the OMB hearing. The OMB chair denied the appeal, also reasoning that the site was already over-intensified, was inappropriate for the zone

in which it was located, lacked the necessary parking availability and that the proposal provided an inferior and even unsafe egress for those apartments.

Not willing to accept the denial, the applicant made some modifications to the proposal and applied to the city to allow for three apartments and for a rezoning of the property, and these were denied for the same reasons. Once again the owner appealed to the OMB. Once again the city felt strongly enough that it defended its decision at the board.

What a difference a different chair makes. This time the chair found it quite acceptable to allow for a total of six units and to devote a chunk of the little green space that there is for a stairwell to the basement units, something that is totally out of keeping with the neighbourhood. Interestingly enough, the chair felt it was quite appropriate to import the parking standard from the commercial zone so that no further parking spaces for the extra units had to be provided.

The second hearing at the board raises these questions: What are the standards by which decisions are made? How can two board chairs see roughly the same application on the same site in two such divergent ways? City council voted to deny this matter not once but twice. Why were the wishes of the council, which must comply with its official plan, not respected?

This experience did not provide confidence in the impartiality or the even-handedness of the decision-making process of the OMB chair. Decisions end up being the luck of the draw. Ours was not the only such questionable decision. In fact, just last month the board allowed the over intensification of 1000 Mount Pleasant Road, in direct opposition to the specific bylaws and site plans that were developed to protect the neighbourhood in that community and the express wishes of the city.

Have you addressed this concern? And if not, when you write the regulations will you address this blatant disregard for valid official plans and bylaws? Will you ensure that there are clearly stated standards that must be adhered to?

More questions; what I have related is not all. The board is supposed to be a quasi-judicial forum that has a more dignified atmosphere than a committee of adjustment but nevertheless strives to be resident-friendly. At least that is how we found our first OMB hearing. What a shock to attend the second rezoning OMB hearing. The chair reprimanded the city solicitor and cut off residents giving testimony. In fact, the solicitor representing one of the residents did not lead his witness through her testimony for fear of irritating the chair and placing the focus on him rather than on the testimony. Astonishingly, the chair at one point, and I can only use these words to describe it, actually stomped out of the room. Disturbingly, at least to the residents present, the chair asked leading questions of the applicant as to how the basement entrance could be improved.

As an introduction to residents, the impression fused in their memories is one of the municipal board being a hostile place to residents and professionals alike and that OMB chairs can behave in an unprofessional manner and

get away with it. The event raises these questions: Who is appointed? What expertise do they bring to the role? What are the standards applied in the selection process of members of the board? Who does the selecting of members? It is time to stop the practice of appointments as political rewards. What oversight is there to ensure that members are professional and even-handed? Most importantly, where is the accountability?

First, there were no minutes taken. Yes, the chair made notes, but that is a self-selecting process. If the lower-level committee of adjustment keeps minutes, why not the board? Should there not at least be a taping of the proceedings for reference if no minutes can be taken?

Secondly, why does one, unelected individual, responsible to no council, to no province except in a general sort of way, and certainly to no electorate, have the power to overturn the decisions of duly elected councils on applications that run counter to official plan prescriptions and that trample on any vision that a city may have for its various areas? I stand to be corrected, but I don't believe that this lack of accountability has been addressed.

1440

It is not good enough to be able to take the OMB to task at Divisional Court for errors in law or clear bias. A decision should be reviewable for its adherence to official plans, for its impact beyond a particular site, for the ability of a city to provide the necessary infrastructure to support the developments allowed and for a city to provide stable residential neighbourhoods. These neighbourhoods are crucial to the well-being and vitality of cities.

The board would serve the planning process better as an advisory body and let the politicians be accountable to the electorate.

A matter of words: In the legislation it states that the board is required to make planning decisions that are "consistent with" the provincial policy statement. Official plans must also be consistent with the PPS. So why must the board only "have regard to" decisions by municipal councils? The loop needs to be closed. The word "regard" connotes only a looking and not an engagement and relegates council decisions to a lesser standard. And what is the difference between "having regard for" as is presently required and "having regard to"? I fail to see the difference. We have all seen that "having regard for" has been an ineffectual requirement ignored with regularity as municipal decisions have been overridden many times, including our case. There needs to be consistency.

Limits on evidence and participants: The legislation introduces the following: Participants would be limited to those who took part in the process at municipal council and evidence presented at the same.

I understand that this concept was introduced to prevent developers and builders, whose very capable lawyers can find new angles, from bringing new evidence to the OMB to support a new hearing at the board. That is good. This prevents the revolving-door application. However, I am deeply concerned that this restriction will

be detrimental to the voice of the ordinary citizen or resident. The reason is that developers and ordinary residents exist on an unequal footing in this game, and to many lawyers, this is a game. Development lawyers and planners know the development process and planning legislation. They make their living using this knowledge. They spend their working days steeped in the planning process. It is what they do.

Residents, on the other hand, with rare exception, do not have planning expertise nor do they spend their working hours steeped in planning. When ordinary residents encounter a planning situation, they more than likely do not know how the OMB works, or even how the committee of adjustment works, what the official plans or bylaws state, or what provincial policy is. Suddenly they are propelled on to a steep learning curve that must be managed on their personal time, outside their working hours. They have to discover the sources of information and then digest them in order to understand the particular situation before they can formulate an appropriate response. Residents then have to organize to respond. In the meantime, the developer or builder may have been working with the city for months on an application.

Lastly, developers/builders can recoup the cost of applying to the OMB when selling and can claim it as a business expense. Residents, on the other hand, should they require the services of professionals, must hire with personal "after tax" dollars. It means going door to door to sell \$20 memberships. It means fundraising and pleading for donations to build up any kind of a fund. This takes time, and it's after work time.

Residents, because they do not inhabit this planning process world, are not as likely to be attuned to various proposals that come before council, even if a city gives notice. It is often only when council has made a decision that there is awareness in the community of a proposal and facts that are relevant. If a developer/builder with the expertise available to them fails to present a thorough case, that is one thing. Residents failing to be aware of relevant facts is a different story.

You must know how difficult it is for residents to launch any kind of response. So why are you doing this to us? Why are you hobbling us even more? It is already a David and Goliath situation and now you want to take away even our slingshot.

The democratic element: This Liberal government is taking the initiative to examine how citizens can be more fully involved in the democratic process by creating a citizens' assembly whose role will be to examine that process and make recommendations for improvement. To improve the democratic process so that it takes into consideration the realities of the 21st century is a worthwhile goal, and I'm pleased that this step is being taken.

However, when I turn to the OMB process, I see, time and again, an unelected and unaccountable individual making a decision that overturns the decision of a democratically elected city council that has to follow an official plan that is supposed to be consistent with provincial policy. This is not fair, this is not right, this is

not democratic, and this certainly does not stem the cynicism of the electorate.

If we truly wish to improve the quality of democracy in this province, we must address the lack of it in this legislation and in this process. It would be a grand step.

The Vice-Chair: Thank you very much for your deputation. We have about two and a half minutes for each party, starting with the government side.

Mr. Sergio: Thank you for your presentation.

Bill 51 does a couple of major things. One is to give the power to local municipalities. They are the closest to the people, as we say, so they would be able to make the best decision for their own local municipality. The other one is to give local citizens, individuals and local groups, the opportunity and make them responsible to participate in the planning process as well.

What do I mean by that, or what does Bill 51 impose, if you will, by that? I don't think that I, as a taxpayer, have to hire a lawyer, a planner, an engineer, a statistician, whatever, to make my point at council or a public hearing. I think it's enough that I participate and voice my concern with respect to that application. That, I would take as evidence if I want to appear later on at the Ontario Municipal Board.

I think, and correct me if I'm wrong in your view, what may constitute a frivolous appeal at the OMB at the last moment—it is to avoid those frivolous appeals by someone who did not make any appearance at any particular time. So I think that differs from, "Don't take my rights away." I think the bill gives you as an individual, or an organization, ratepayers, plenty of opportunity and wants you to participate. That is why we are saying to local municipalities—and I'm asking you the question—"local appeal bodies." Give them the local power. Do you favour giving—

Ms. Reis-Smart: Definitely. There are situations that shouldn't be at the OMB level; they are local—

Mr. Sergio: And final.

Ms. Reis-Smart: —minor and final. The problem is the ability to get the information out to the residents, to the community. For instance, what happens on one street doesn't get known on the next street, and yet it may impact on the next street also.

The Vice-Chair: Thank you very much. We'll move over to the official opposition.

Ms. MacLeod: Thank you very much for your very interesting deputation. I'm very concerned with pages 1 and 2 of your deputation, with regard to what a difference a chair makes. I think that's a very sad commentary. I'm just concerned—you raised a number of questions, and I can't help but think about the local appeal bodies that could be established by a municipality. Some of the same questions that you're asking about the OMB, I certainly have about local appeal boards. For example, what are the standards by which decisions are made? What about chairs; how are they chosen? Are they trained properly? Is it going to be a professional body? I'd like to know your views on that.

Ms. Reis-Smart: I think they definitely should have some sort of professional expertise, have an understanding of planning. In the one situation, there was a second chair, and he was being trained in the process. He had been a politician. I don't know what his total background was, but the question arises: What kind of expertise did this person have in order to sit on that body? I know that my councillor ended up being a member of the board, and of course she had spent her whole working life dealing with these very issues. She would have known it in and out, so she would have made a perfect member because of her great understanding. So I think you do have to look at what they bring to it.

1450

Ms. MacLeod: So it shouldn't be a political appointment, for example. I'm just wondering, very quickly—

The Vice-Chair: I have to rule you—the time's up.

Ms. MacLeod: Thank you, Chair. I tried.

The Vice-Chair: I have to move on to Mr. Prue.

Mr. Prue: A couple of questions. You started talking about what happened in your neighbourhood. Was there a neighbourhood group or did you go as an individual?

Ms. Reis-Smart: No. We had an association that went and argued, but we were not—again, I don't have enough knowledge—a party to it; we participated.

Mr. Prue: It was my experience, way back when I was the mayor of East York, that there was a very large development and there was a developer who took the case to the OMB and it lasted for months. In the end, the neighbourhood group was left with a bill in the hundreds of thousands of dollars. Did this happen to your group too?

Ms. Reis-Smart: No. The reason is that the city felt strongly enough that their case was right, that it was way over-intensified, that they provided the solicitor both times.

Mr. Prue: So it didn't cost your group any money?

Ms. Reis-Smart: No, it didn't. However, one of the residents—the one who was living next door to this building—hired her own solicitor because she felt she needed more ammunition than she was getting through the city.

Mr. Prue: And that ended up being very expensive?

Ms. Reis-Smart: Oh, yes. She paid thousands.

Mr. Prue: You also talked about the difference that a board chair makes, and that can be absolutely true. The previous deputant suggested that the board people be appointed for five or six years at a time. Do you think that's wise? What qualifications do you think the board chair should have?

Ms. Reis-Smart: I don't think that's a problem as long as the chair is making decisions that are based on criteria that are fair, that are reasonable.

Mr. Prue: It doesn't matter how long they are appointed for or the process by which they get there? Right now, they're appointed by the party in power.

The Vice-Chair: Thank you very much. That's—

Ms. Reis-Smart: I'd rather they not be appointed; they should have criteria, what these people need to have to fulfill that role.

The Vice-Chair: We'll have to leave it at that. I'd like to thank you for your deputation here this afternoon. Have a good afternoon.

LONDON HOME BUILDERS' ASSOCIATION

The Vice-Chair: The next deputation is with the London Home Builders' Association. This will not be a video conference; it will be a teleconference. Unfortunately, we are having difficulty or they are having difficulty—somewhere there is difficulty—with the video part. I do believe that we have a Mr. Dave Schmidt and a Ms. Lois Langdon. Is that correct?

Ms. Lois Langdon: It's Lois Langdon. I'm here on behalf of the London Home Builders' Association. Mr. Schmidt is unable to be with us today.

The Vice-Chair: Welcome. I'll just say that you have 20 minutes for your deputation. Should you not require the 20 minutes, I will take the remaining time and divide it between the three parties here and there will be a question-and-answer period. So if you'd like to begin.

Ms. Langdon: I'm here on behalf of the London Home Builders' Association. My position is executive officer. I've been involved in the residential construction industry for 22 years, which includes 10 years in a management position with a building and development company and 12 years in my current capacity with London Home Builders. I'm here today on their behalf. LHBA acts as the voice of the residential construction industry in London and includes over 230 member companies. We're proudly affiliated with the Ontario and Canadian Home Builders' Associations and also [*inaudible*] in partnership with the London Development Institute. Due to prescheduled vacation commitments, the president of the London Development Institute sends his regrets, and my comments today will also be on their behalf.

LHBA and LDI would appreciate your attention to a number of industry concerns with the proposed Bill 51. Over the past several years, the development industry in London has been drastically overhauled by a number of initiatives, including most recently Ontario regulation 97/104, [*inaudible*] the new provincial policy statement, building code changes, WSIB reforms and the proposed Clean Water Act. While some of the changes are supported in principle by the residential construction industry, we have been vocal in that it is imperative that we offer [*inaudible*] housing forms at affordable prices to suit their lifestyles.

We have reached a general consensus with the government on the need—

The Vice-Chair: Excuse me for a moment. We'll just have to stop there for a moment. We're having some technical difficulties here in hearing you. Just bear with us for a sec. We're having it checked out here. I don't

know if it's from our end or from your end, but there were some sections that were missing in your presentation; your voice was not coming through.

Ms. Langdon: Sorry.

The Vice-Chair: Okay. The difficulty is at your end. Let's continue, and hopefully whatever has happened will have improved. Carry on.

Ms. Langdon: Thank you. I was indicating that there have been a number of initiatives over the last years that have overhauled our industry, most recently Ontario regulation 97/104 that we are currently scrambling to try to comply with and to work out; also the new provincial policy statement, building code changes, WSIB reforms and the proposed Clean Water Act. While some of the changes are supported in principle by the residential construction industry, we have been vocal in that it is imperative that we offer Londoners a broad choice in housing forms at affordable prices to suit their lifestyles.

We have reached a general consensus with the government on the need to better manage our growth, preserve our air and our clean water and protect our green spaces, while at the same time working to accommodate the anticipated growth over the next few decades.

Bill 51 proposes new, often time-consuming requirements for developers, a number of new powers for municipalities and a revised role for the OMB. LHBA and LDI are of the opinion that what may have been the intent of Bill 51—to reduce municipal and OMB workloads—is unlikely to materialize with the proposed changes.

London city council usually makes proper planning decisions on the majority of applications that appear before them. However, in some situations our members will exercise their right of appeal to the OMB to ensure that their concerns are heard in a fair and impartial environment. The OMB must retain the right to hold independent, non-partisan hearings on a de novo basis and must continue to hear third party evidence to ensure that a fair and impartial decision is made. Planners, architects and engineers are all part of a valuable consultation that must be maintained as an integral component of the planning process by the OMB. Hearings de novo apply for a debate and comprehensive review of the planning merits of a case that cannot occur at a municipal council meeting.

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The city of London operates on a committee basis, wherein all matters pertaining to planning are dealt with by a planning committee made up of elected councillors and it is the recommendations of the planning committee which are considered by council as a whole. Accordingly, very rarely does an applicant appear before council to present its support for a Planning Act related application. Rather, this process is all handled at the planning committee's public meeting forums. Generally, applicants are provided with a 15-minute window before the committee to present their application and support thereof for the committee's consideration.

Bill 51 proposes that no new evidence aside from that which is presented to council can be presented to the

OMB. This requirement will significantly lengthen the time requirements of applicants before the city planning committee in order to ensure that all relevant and supporting documentation that they may need to rely on at a potential future board meeting is heard. Considering the planning committee agendas are already full, with meetings taking several hours, this requirement will significantly increase time requirements before the planning committee and ultimately cause unnecessary delays. With this "no new evidence" proposition, one can imagine development proponents now taking several hours before each planning committee to ensure every last report and documented information is presented to committee. Currently, reports and committee recommendations to council do not normally include all of the background information considered by the planning committee. Also, one can anticipate the need to have every professional consultant and legal representative involved through the approvals process to be in attendance at future planning committee meetings and the following council meeting to ensure that their information is appropriately conveyed. This will all cost significantly more time and inevitably more money. Therefore, LHBA and LDI recommend that the proposal to have no new evidence presented to the OMB be eliminated and that full hearings de novo be maintained.

The "complete application" provision in Bill 51 is vague and may allow the city of London to refuse to accept applications for rezoning, official plan amendments and plans of subdivision and consent unless the application is deemed complete according to the municipality. We are concerned that with a lack of timelines, an application may sit in limbo without a decision being made on the completeness of the application. If acceptable terms of reference for complete applications are not established, costs and time for both municipalities and applications will inevitably increase.

LHBA and LDI recommend that the "complete application" provisions in Bill 51 be revisited to include a mandatory pre-submission consultation to outline the terms of reference for what is required for complete applications and to assist in streamlining the approval process. LHBA and LDI further recommend that timelines be set for a municipality to deem that an application is either complete or incomplete.

Lastly, Bill 51 must be amended to stipulate that only relevant information to support the application be required. LHBA and LDI do not support the proposal for a local appeal body if the OMB does not have the authority to hear an appeal of its decision. Exempting planning decisions from the review of the OMB or creating a local appeal body for certain types of applications would not serve the provincial interest.

Our members are in support of high-quality urban design architecture. However, we have a number of reservations with respect to design regulations and review panels that would exercise control over architecture, urban design and built form.

The proposed changes to section 41 of the Planning Act deal with site plan control and urban design in order

to give municipalities new powers to regulate the exterior design of buildings. The city of London has approved commercial design guidelines already. This document is simply guidelines, suggested criteria, and is not enforceable under any prevailing legislation. This would change with the proposed change to the Planning Act. The difficulty here is that many retailers are not independent and work extremely hard to create a brand, which is carried forward from city to city where they construct new buildings, if you think of Costco, Future Shop or McDonald's as examples. This has benefit, as it makes them more readily recognizable to their consumers while at the same time keeping their design costs down. A dangerous precedent would be set if we start permitting municipalities to regulate bricks and mortar outside of the building code. LHBA and LDI are further concerned that approval authorities will erode housing affordability by maintaining the highest standard of building materials and features, which come at a high-cost premium.

LHBA and LDI recommend that proposed changes to section 41 of the Planning Act regarding site plan control and urban design be revised to minimize municipal power to control architecture and design. These provisions are at the expense of consumer choice and will deteriorate housing affordability.

LHBA and LDI are concerned that imposing conditions through zoning has the potential to make some projects economically unfeasible. Zoning conditions could significantly increase the cost of many projects, which would in turn impact housing affordability.

In regard to land dedications and densities, section 51.1 of the Planning Act indicates that "The approval authority may impose as a condition to the approval of a plan of subdivision that land in an amount not exceeding, in the case of a subdivision proposed for commercial or industrial purposes, 2 per cent and in all other cases 5 per cent of the land included in the plan shall be conveyed to the local municipality for park or other public recreational purposes or, if the land is not in a municipality, shall be dedicated for park or other public recreational purposes."

The 5% land dedication requirement is thought to be a reasonable requirement where it pertains to greenfield sites. However, the 5% parkland dedication requirement is imposed on all of the land included in the plan. This becomes problematic when the plan includes lands which are required to be dedicated to the municipality for some other underlying public interest; for example, schools, road dedication, stormwater management ponds and parks themselves. Accordingly, the land developer is now dedicating 5% of land for park purposes on top of the land that they are already required to dedicate for other municipal purposes. This leads to an inefficient utilization of land resources and greatly affects overall achieved densities and indirectly contributes to urban sprawl.

LHBA and LDI recommend that the province amend Bill 51 to require municipalities to provide applicants with an offset credit on their parkland dedications or cash

in lieu of parkland conveyance or development charges arising from proposed land dedications or zoning conditions.

The proposed legislation includes a provision that would eliminate an applicant's right to appeal to the OMB if a municipality refuses its application for conversion of employment lands unless it is part of a five-year review of an official plan.

The definition of "area of employment," as currently written in Bill 51, indirectly includes mixed use, which effectively includes a residential component and will severely affect, if not paralyze, attempts at increased intensification. We recommend that the province review and amend its current definition of areas of employment in Bill 51 so that areas of mixed use cannot be included.

The key to Bill 51 which will address a number of well-entrenched practices is how we manage transition. Therefore, the LHBA and LDI recommend the province ensure that applications be assessed against the plans and policies in force on the date of the application. We further recommend that the act not be retroactive and come into effect on the date of royal assent.

LHBA and LDI are in support of provincial efforts to ensure municipal official plans and zoning bylaws are updated in a timely fashion and brought into conformity with provincial growth plans and provincial policy statements. These steps are crucial to achieve provincial intensification and sustainability.

We also applaud the government's efforts to improve the quality of OMB decisions by enhancing the experience, qualifications, compensation and training of board members.

In conclusion, the LHBA and LDI support a balanced land use planning system to ensure a clean, green and economically competitive city of London and province. However, from the industry's perspective, Bill 51, if enacted as currently drafted, has the potential to unnecessarily delay projects and increase costs to an already lengthy and overregulated process, which in turn will negatively impact affordability.

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In closing, I would like to reiterate that as one of the primary drivers of the local economy, the residential construction industry in London pours significant sums of money into the local, provincial and federal economy. It is in the best interests of all citizens that the provincial government and the industry work together to ensure that the new housing and renovation industries continue to thrive.

I would like to thank you for your attention and interest in my presentation, and I look forward to hearing any comments or questions you may have.

The Vice-Chair: Thank you very much for your deputation. We have about two minutes for each party to ask a question. We'll start with Mr. Hardeman from the official opposition.

Mr. Hardeman: Thank you very much for the presentation. You mentioned a number of initiatives that have taken place. Could you just give me a ballpark figure of

what impact it's going to have on the housing market in the city of London when you add all the initiatives that have been added to the process, including Bill 51 when it's passed?

Ms. Langdon: Are you looking for an actual dollar amount or percentage?

Mr. Hardeman: I think just the generalities of it, not necessarily the dollars per house but on a percentage basis, or just the impact, generally, on the industry.

Ms. Langdon: I don't really have information that I could give to you that would be even a percentage, but I can tell you that in the time that I have been with the London Home Builders' Association and, more importantly, in the last two years, the rapid amount of legislation that we have had to overhaul our industry with never impacts with more affordability; it always impacts in a negative way.

Mr. Hardeman: Thank you.

The Vice-Chair: We'll move to Mr. Prue.

Mr. Prue: A couple of questions. The first one: You made the statement about the definition of "area of employment" and that you did not want that to possibly include areas of mixed use. Can you tell us why?

Ms. Langdon: I don't have the answer to that. If I could take that question and send it to you in written form—would that be possible?

Mr. Prue: Well, I suppose, but you did make the very strong statement that you did not want mixed use included in "area of employment." Or are you just reading this from someone else?

Ms. Langdon: It's partly presented on behalf of the LDI, and that is one of their points that I'm not totally familiar with.

Mr. Prue: All right. The second aspect: You were not in favour of having a municipal appeal body. The appeal body, as I understand it, is for committee of adjustment to take some of the load off the OMB. Can you tell me why you're not in favour of having committee of adjustment decisions adjudicated at the municipal level?

Ms. Langdon: It's thought that the municipal politicians are more affected by local neighbourhood groups, that NIMBYism is quite a part of what they deal with and that they will be swayed by that rather than being in keeping with a provincial policy statement.

Mr. Prue: Thank you.

The Vice-Chair: We'll move on to the government side.

Mr. Sergio: Just a quick question. It's very difficult to ask a question over the phone. It's much better when we see you so we can see your reaction as well. With respect to the changes that are being proposed, how do you feel with respect to the Ontario Municipal Board? Are they fair? Too stringent? Are we too lax? What changes would you like to see?

Ms. Langdon: We would like to see the OMB better supported in terms of the skills of the people sitting on the board. We would not like to see their powers to review municipal decisions eroded.

Mr. Sergio: Local appeal bodies: Who should be appointing the members, the province or the local municipalities?

Ms. Langdon: We're not in keeping with there being local boards.

Mr. Sergio: Local appeal boards.

Ms. Langdon: We're not in agreement with there being local appeal boards.

Mr. Sergio: I see. Thank you very much.

The Vice-Chair: Thank you for your deputation and have a good afternoon.

STANLEY MAKUCH

The Vice-Chair: We move on. We now have Mr. Stanley Makuch of Cassels Brock and Blackwell LLP. Welcome. Make yourself comfortable. There is water right beside you on the table. You will have 20 minutes. Should there be time remaining, I'll split it between the three parties. At the outset of your deputation, please state your name for Hansard.

Mr. Stanley Makuch: My name is Stan Makuch. I'm here basically because I have a wide practice in municipal and planning law. I represent municipalities, developers and ratepayer groups. I am an academic who has been a professor of law and planning at the University of Toronto for many, many years. After I left full-time, I continued to teach there. So I've been at the U of T for probably 30 years dealing with all of these issues and in fact wrote books as well as articles in books, about whether the OMB should be abolished, whether we should have it. It's a problem I've wrestled with for a long time, so I was very interested in the proposed changes, and thus wanted to address the committee.

I also have clients, quite frankly, who are concerned about this. They're obviously on the development side more than the municipal side. The municipal clients that I have—I'm a town solicitor, or a municipal solicitor, in three separate municipalities—don't really have the same kinds of concerns.

Let me just say that the beginning of my paper lists the six areas of concern that I have with the legislation. One is the limits to the right of appeal; the second is the limits on the right to seek party status; third, restrictions on the evidence that the OMB may hear; fourth, authority of municipalities to prevent appeals until additional information is received; fifth, the control of architecture through site plan approval; and finally, the appointment of local appeal bodies, which we've heard about.

I'm going to just go through those in order and tell you why I have concerns about those six aspects. There are other concerns I have but I thought these were the most important, so I wanted to deal with these.

I support the idea, obviously, of strengthening the municipalities. I think it's important that they function fully as senior levels of government do, but in my view these provisions don't strike a proper balance between the power of the municipality and the need to protect minority or private rights. That's the balance we're

always seeking, the kind of argument you hear about the Legislature and elected politicians deciding things and it shouldn't be decided by appointed people. That's the same kind of argument that we have with the Charter of Rights and Freedoms. It's fundamental to a democracy that there be elected bodies that get to respond to the local community but that there also be limits and controls on that power. We're always trying to get a balance between those two sides. I think in this case the balance has shifted too much to the electorate. I think, in fact, the OMB functions like a court exercising powers to protect people, the way the courts do with the Charter of Rights and Freedoms, and therefore we have to be very concerned before we take that power away.

Let me go through the six items that I list there. First is the limits on the right of an appeal to the board. It's limited in four different ways. The first three are because you can't appeal, under this legislation, with respect to an employment designation, altering a settlement, as I point out here, or with respect to two units in a building. Finally, there's the issue of where someone hasn't made the representation to council.

With respect to the first three, that is, no appeal at all with respect to employment areas, two units or settlement areas, it's just restricting the power of the board and the right to have that balance struck in that examination, and I don't see any strong reason for that. Why single out these matters? Why are these separate from other planning matters? I don't see a justification or a reason to do that. It will increase the expense and formality of appeals, because people will end up going to court on these matters, making it more difficult for them to participate. I think we should not have those kinds of limits. There's no reason why the board should be excluded from dealing with those matters.

With respect to the last limit on the appeal, that is, if someone has failed to make a representation to council, I think this is particularly problematic. We now have provisions in the Planning Act that the board can dismiss an appeal that's frivolous, that they think shouldn't be there. This law will simply say they can never be there. Somebody may feel they have a legitimate concern, and in fact they may have a legitimate concern, but they'll never get it there if they weren't there at council. If they happened to be sick, if they missed the notice, if they were unincorporated ratepayers' associations—these people are all left out: no hope, no way they can get before the board on an appeal. I just think it's too draconian. It's too strong a prohibition, especially when right now we have one where the board uses it quite often. If there's a frivolous appeal, there's no basis to it in planning, it shouldn't be there, the board can dismiss it and prevent a hearing from occurring. That discretion should not be removed.

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Go on to the second limit that's in the legislation, and that is to seek party status. Again, right now, anyone can come forward to become a party. It's good to try to encourage them to be at the city council or the municipal council meetings before they do that, but again, there

may be some difficulty in doing that. Moreover, there may be people who don't appear at city council because the municipality is onside with their position. Somebody else appeals it, but they haven't said anything at municipal council because they feel that the council is onside and it's going to be approved. If it gets approved and somebody else appeals it, they can't go to that appeal and have party status because they didn't speak. It could affect them very much. But simply because they didn't speak is not a reason why they should be excluded. There is some power there for the board to play with that, but still, it seems to me there's no need to have restrictions. We don't have a problem with a multitude of parties, all sorts of people turning up at the board needlessly or without any foundation, and it seems to me we want to encourage that ability to be there. So that's the second point I have on page 2.

The third restriction is a restriction on the evidence that the OMB may hear. I think that's a very inappropriate one: a party other than a public body may not introduce new information or material that was not before council when it made its decision. As I point out on the top of page 3 of my submission, this provision will significantly affect the procedural fairness of the board. Firstly, it's unclear what is meant by "new information and material." If you look at that legislation, this would mean that there's no new testimony at the board, because that would bring new information and material. You can't do it; you can't file a new report, a new study. We're going to come to the issue of some special exemptions, but you can't cross-examine. That would be new information and material.

It seems to me that in drafting the legislation, that kind of problem and how broad this limit is was not examined. To me it was like people who didn't really go to the board and know how you would define this and what the parameters of it are. It's going to cause, I think, a great deal of problems and going to court trying to decide on what is new information and what isn't while you try to sort that out. I think somebody else pointed out, as I sat here listening to the few last speakers, that what it'll do is create an incentive to produce as much material as possible—which is, I guess, good in some ways—at the council meeting. Council meetings will become totally bogged down, because all lawyers will advise their clients to put all of the possible information that they could ever rely on. Right now, councils generally have a five- to 10-minute restriction on deputations. The act requires that there be a fair opportunity to make representation. You have to give all of that information; people have to have an opportunity to respond to all of that information; you can't do it in five or 10 minutes.

Nobody, it seems to me, thought about the impact that this could have at the council level. So they haven't thought about it at the OMB level, where there is this issue of what gets excluded. Therefore, everything has to go in early at the council meeting, and that's going to have a profound effect on the way that councils have to function. We're going to end up with a lot of court challenges, it seems to me, with respect to that.

There is also in the act a provision that public bodies can bring in new information at the board, even though the public can't; so again, a ratepayers' group couldn't, if it didn't do the work early enough, present it to council. Public bodies can bring in new information, yet it's the public bodies that get the application circulated to them early. They get knowledge of it way in advance, prior to the public ever finding out about it, yet they and not the public get the opportunity to come in late at the OMB. It seems to me that's not open and accountable and an appropriate way to deal with this process.

The third thing that I mention, at the top of page 3, the third paragraph, is that there is provision to let the evidence in if it wasn't reasonably available at the time that the council heard the matter or was dealing with the matter. There is a very stringent test in law now, and I think that test is going to be applied because it's the one applied by the Court of Appeal—very difficult, therefore, for ratepayer groups, the ordinary folk, to get any access at the hearing when it's called. If there is any permission given to get new information in—the regulations are providing for 30 days for council to respond because that new information has to go back to council and give them 30 days to respond—the reality of that is probably six months' to a year's delay in the hearing because hearings are scheduled very tightly and you have to find time available for all the lawyers, the board members etc. And if you delay it 30 days, that means their time is used up, it's gone. They then have to go back in the process and find a new date, and the way the system works it's going to be a long, long time; so incredible delay I think in terms of that provision causing problems.

Going on to the fourth one, on page 3, the authority of municipalities to prevent appeals until additional information is provided, municipalities can ask for information and the board can determine whether the information is provided, but the municipalities can keep asking for more and more studies. Whether they're relevant or needed is not controlled in the legislation or by the board. So if there is a need or a desire to delay the situation, simply ask for more studies. An appeal can never be taken until all the studies are done, and yet there is no mechanism to say, "What are the studies and when are they all done? How do we know that?" So an appeal can in fact be denied for God knows how long.

The fifth point I make, on page 4, is the control of architecture through site plan approval. This is an interesting issue from a legal perspective, because I think there is a whole Charter of Rights problem, and that is freedom of expression. The creation of architecture and buildings and what they look like—and I point out an important case that I used to defeat a city of Toronto bylaw, the Butler case. Even if it's a blank wall it can be expression, it can be a way of an architect expressing a view. Now the municipality is going to be able to control that freedom of expression. I think there is a real issue there of whether that will be held to be in conformity with the Charter of Rights and Freedoms. Certainly, if it's not related to safety there's a big issue, and even if

it's related to urban design it's so subjective. How do you know what's beautiful? Are planners in our municipalities and the local politicians or, with all due respect, any of us the ones to decide what is beautiful for someone else? Anyway, I think there's a real problem there with the control of architecture and the Charter of Rights.

The sixth thing that I point out is the appointment of local appeal bodies. It's ironic, because in my view we need an OMB, very importantly, for review of committee of adjustment decisions. It's at the committee of adjustment that local decision-making and who's got the ear of the councillor and how many people are on which side have a profound effect on decisions. I was a vice-chair of the committee of adjustment in the city of Toronto; I know how the system works. I was also on planning board; I know how the system works. When you get people at that local level who have councillors' support, there's no hope for them. To go to an appeal body appointed by the local council, that is also going to be affected by the local councillor. What you want to do with a committee of adjustment appeal, it's not new planning, it's not changing the plan or the zoning bylaw; it's deciding whether a particular approval fits within the bylaw. It's adjudicative. It's making a kind of judicial decision; there are criteria there. That should be taken away from the local level, if anything should be. We're talking about democracy. That's not the place for it, when you're dealing with the committee of adjustment. The committee of adjustment appeals definitely should be left at the Ontario Municipal Board.

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There are a number of legal problems that arise from what I just said. There's a whole issue of bias. You may have heard it with respect to provincial and federal courts and whether judges are independent. You're going to have a bigger problem with local appeal bodies appointed by local councillors and how independent they are when the municipality appears before them. For sure, you're going to get an argument that the body is biased and cannot exercise its powers. It's a reasonable apprehension of bias. They don't even have to have bias, just a reasonable apprehension.

So you've got that in terms of the appointment, and paying the salaries and having the influence when you have a local appeal body. You also are going to appoint local people, who have to be ratepayers or residents in that municipality. Many of them are going to have influences from the local municipality, have their own personal biases that affect their decision.

Finally, you may also have a situation: How do the local municipalities bear the cost of that? Are they going to bear it out of the tax base? No. Then they're going to bear it out of the application fees and discourage appeals because now there will be a significant fee to try to cover the cost of the local appeal body. Again, something that, in my view, hasn't been thought through.

Those are six areas—I tried to be as quick and as brief as I could—that I think the legislation has some problems with. You obviously can see that I believe the board has

an important function, a balancing function, as I said at the beginning, not unlike the kind of tension we see at senior levels of government, if I can use that expression, with the charter and the provincial and federal governments. We see that as well here and I think it's an important institution that helps to evaluate and create good planning in the province.

The Vice-Chair: Thank you very much for your deputation. We have about a minute and a half for each. We'll start with Mr. Prue.

Mr. Prue: Just a question back here to the limits on the right to seek party status. You've made a pretty strong statement here on people wanting to get in to the appeal. You said that it "will place an additional hurdle upon such persons to obtain party status, and it is unknown whether the OMB will find such reasons to constitute 'reasonable grounds.'" I was puzzled by that. Any court of competent jurisdiction, any tribunal of competent jurisdiction can use its own good judgment, reasonable grounds to include something in. Why would you think this would be more difficult than in any other administrative tribunal?

Mr. Makuch: You're mixing up a little bit courts and administrative tribunals. Courts are bound by stare decisis. They have standards that they set and they have to follow previous decisions. The principles that they set out in those decisions have to be followed in subsequent decisions. Administrative tribunals, in effect, can't do that. If they do that, the courts will strike down decisions because they've fettered their discretion, they have restricted their ability to evaluate it totally and afresh. That's the problem you have with that kind of standard for them.

Right now, we don't have a standard of reasonableness for evaluating a planning decision. There is no standard in the Planning Act, because it doesn't work that way and it can't work that way. It's the same problem when you come to deciding on whether a person should be allowed in or not allowed in after the fact.

The Vice-Chair: Thank you very much. Next we'll move to the government side.

Mr. Sergio: Thank you very much for your presentation. Good to see you again.

Mr. Makuch: Good to see you.

Mr. Sergio: Look at all the work we will be creating for you lawyers in consulting.

Mr. Makuch: Quite frankly, I don't even get paid to be here. I'm here because I'm doing what I view is in the public interest.

Mr. Sergio: That's not my question.

You also have experience. You bring out many good points but, especially coming from Toronto, you've had the experience of sitting on the committee of adjustment and so forth. When developers bring an application with minimum information, doesn't the planning staff give you as an applicant, let's say, a list of what would be a complete application, things for you to bring forth?

Mr. Makuch: No. Some municipalities do, some don't, but none of them are relevant to the appeal period.

I don't have a problem with one saying, "Here's the list of information. Provide it by the six months," or three months. "If you don't have it by then, we deem you to be refused, and you can appeal, because you haven't given us the material." I'm not trying to get the developer off the hook. The developer should have the obligation to bring that information. But what you don't want to do, and I think it's not in the public interest, is to say, "You have to have the information," and then they produce that, and, "By the way, do this and do this," and it goes on for years and years and years. It has already taken up too long—

Mr. Sergio: So there should be a time limit?

Mr. Makuch: Yes.

The Vice-Chair: Thank you very much. We'll move to Mr. Hardeman.

Mr. Hardeman: I was interested in the last one, the local appeals body. We've haven't had any replies, but we've heard questions during our hearings about who would be the local appeals body. There is some suggestion—no one's actually said it—that the local appeals body could be appointed by the provincial government. Could you explain to me, you being so involved with the situation, what would be the difference between a local appeals body appointed by the provincial government and the Ontario Municipal Board?

Mr. Makuch: There would be a difference in name, maybe a difference in salary. The board is totally underpaid. To me, it runs counter to what this legislation is trying to do. I think that's better than having it appointed locally. Then why not just leave it with the board? They're provincially appointed and they have the expertise.

Mr. Hardeman: In your interpretation, though, what you read in the act, a local appeals board would be appointed by municipalities, as you presently read it now?

Mr. Makuch: Yes. That certainly seems to be the intent and purpose of it.

The Vice-Chair: Thank you very much for your deputation this afternoon, and have a good afternoon.

REGION OF WATERLOO

The Vice-Chair: Last on our agenda we have the Bayview Village Association. They have cancelled, and also the Sudbury and District Home Builders. I see the regional municipality of Waterloo. You've just arrived. Welcome. Just step up to the table. Feel free to have a seat. There is water there. You have 20 minutes for the deputation. Time remaining, should you not require the 20 minutes, I will split between the three parties for questions. Please state your name for Hansard at the outset of your presentation. Welcome.

Mr. Rob Horne: Thank you, Mr. Chairman. Good afternoon, everyone. My name is Rob Horne. I'm the commissioner of planning, housing and community services for the region of Waterloo. On behalf of the region, our thanks for this opportunity this afternoon to

present our comments. We have provided a written submission to you today as well. My intention today would be to give you some highlights and then allow you to rely on our written submission for some additional details.

Since its formation in 1973, Waterloo region has consistently ranked as one of the fastest-growing communities in Canada. With a current population of about half a million, the region is now the fourth-largest urban area in Ontario and the 10th-largest in Canada. We consist of the cities of Cambridge, Kitchener and Waterloo, and the townships of North Dumfries, Wellesley, Wilmot and Woolwich. The region is home to one of the youngest and most culturally diverse populations in the province and in Canada, a population that drives the kind of advanced economy that maintains Ontario's competitiveness. We see Bill 51 as an important and welcome addition to the municipal tool box of legislative authority.

Planning wisely for the future has required our community to take a hard look at balancing the demands of growth with our exceptional quality of life. To this end, regional council unanimously endorsed its own regional growth management strategy, or RGMS, in 2003. Key elements of our strategy include a new rapid transit system, compact urban growth focusing on built areas, and the protection of both environmentally sensitive areas and prime agricultural lands. Our RGMS is being actively implemented, with over 70 initiatives now under way.

The province's approval of its own growth plan for the greater Golden Horseshoe is a very positive step for us as well and, in our opinion, for communities across southern Ontario. In addition to assisting the province in developing the growth plan, the region's own growth management strategy is a model to other communities, demonstrating how such plans as that for the greater Golden Horseshoe can be successfully translated to the community scale.

In order to successfully implement both the provincial plan and our own, there are two fundamental elements required from the province. The first is investment. The region is actively involved in a variety of discussions with several ministries, leading to a proposed federal-provincial-municipal partnership to build a new rapid transit system, which is now in the environmental assessment phase.

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The second key required element is the expansion of the legislative tool box. Bill 51 responds to this need and represents a major and long-awaited set of new tools. We're greatly encouraged by these tools becoming available in the very near future. Quite simply, municipalities require full legislative authority to implement their growth plans.

I'd like now to highlight a couple of aspects of Bill 51 that we're especially supportive of and explain a little bit why that is.

As you're aware, Bill 51 would significantly enhance the ability of our region, in partnership with our local

municipalities, to implement the plans I alluded to previously. We're especially interested in the provisions that enable prescribed regional municipalities to create community improvement plans and to allow regional and local municipalities to participate financially and collaboratively in each other's community improvement plans. Second, we're keen on enabling approval authorities to require the dedication of pedestrian pathways, bicycle pathways, and public transit rights of way as conditions of draft approval for plans of subdivision and condominium; third, permitting municipalities to set conditions for zoning approvals; fourth, allowing municipalities to regulate external architecture, urban design and sustainability through site plan control; and finally, the ability of municipalities to regulate minimum and maximum density in zoning bylaws.

At the present time, the region is developing its own brownfield redevelopment strategy to implement the urban intensification objectives of our growth management strategy and those of the provincial growth plan. As part of the initiative, regional council this year allocated \$2.5 million to start helping to alleviate the economic barriers of site remediation and redevelopment earlier in the development process. However, due to legislative restrictions in the Municipal Act, regional municipalities are limited in their ability to provide financial support for brownfield redevelopment. By allowing prescribed regional municipalities to establish community improvement plans, Bill 51 would enable such municipalities to provide tax assistance for remediated brownfield properties under the Municipal Act. This is a very important aspect of the bill to us.

As I mentioned previously, the region is currently undertaking an environmental assessment for a rapid transit system as well, to connect the three urban municipalities in the region through what's known as the central transit corridor. The system is intended to provide greater transportation choice for the residents of Waterloo region, to reduce automobile reliance, and to anchor re-urbanization within this corridor. Bill 51 supports the initiative by enabling approval authorities in the region to acquire public transit rights of way as conditions, as previously noted.

While conveying new powers to the region, Bill 51 will also significantly enhance the legislative authority of local municipalities, our partners. With an ability to regulate architecture, urban design and sustainability through site plan control, municipalities will be able to establish or maintain a unique sense of place in re-urbanizing neighbourhoods that will assist in attracting more people, business and investment. As well, the municipal ability to regulate minimum and maximum densities will be essential for directing growth to priority corridors and nodes and for meeting the density requirements prescribed under the provincial growth plan.

There are also some associated legislative amendments that I'd like to highlight to the committee.

As previously noted, we are engaged in an environmental assessment for our rapid transit system, and in

fact the growth plan explicitly recognizes this initiative by showing a proposed higher order transit corridor in the growth plan itself. Furthermore, Bill 51 supports the initiative by requiring all official plans, zoning bylaws and planning decisions to conform to the growth plan and by identifying the design of development that supports public transit as a matter of provincial interest. Notwithstanding this support, however, the Municipal Act currently permits the region to establish and operate passenger transportation systems that employ bus technology. In order to implement the RGMS and the provincial plan and to facilitate the integration of transportation and land use planning, the region has previously requested an additional amendment to Bill 51 which would clarify that the region may operate any of the full range of higher order or rapid transit technologies.

Finally, the region had previously requested that the bill include provision to add community housing or social housing as a sphere of jurisdiction under the Municipal Act for the region of Waterloo.

There are a number of aspects related to clarifying the planning process, and again I'd like to highlight only a small number of those.

Bill 51 proposes a number of measures intended to clarify the planning process, which include requiring more public consultation, pre-consultation and clarifying the submission requirements. The legislation places greater emphasis on decisions made by local and regional councils at the Ontario Municipal Board and will restrict OMB hearings to the information and parties that were before council.

Bill 51 proposes to streamline the OMB to be an appeal body for only significant planning matters by empowering municipal councils with the ability to create the local appeal bodies. The region, in short, supports these amendments, as they should result in a more transparent, accessible and user-friendly planning process with some local latitude.

Areas for further consideration: As I noted previously, the region strongly supports enabling regional municipalities to prepare community improvement plans. However, it's noted that Bill 51 does not specify which regional municipalities will be granted that authority, nor does it identify the matters that may be included in a regional municipal community improvement plan. Often, such outstanding matters in legislation like Bill 51 are addressed in accompanying regulation, and we recognize that regulation has been drafted and tabled. However, given that there are only six regional municipalities in Ontario, the region would suggest that Bill 51 be amended to permit all regional municipalities to prepare community improvement plans and to implement them with their partners.

As the province proceeds to enact any associated regulations, we would greatly benefit from such regulations being as empowering as possible rather than prescriptive. In particular, the region would like to have broad latitude in creating, implementing and designing community improvement plans.

In closing, the region of Waterloo commends the government of Ontario for proposing a set of implementation tools that complement the province's vision for managing growth in the greater Golden Horseshoe. Bill 51 contains many useful tools that when used in concert will greatly enhance the region's ability to implement the growth plan for the greater Golden Horseshoe and for the regional growth management strategy, specifically, in Waterloo region. The region is also encouraged by the opportunities that Bill 51 provides local municipalities for influencing development in their communities and looks forward to working with local municipalities in the region to harness the new tools for a mutually successful implementation approach.

I alluded to areas of Bill 51 that could benefit from further refinement previously. We are certainly very keen on our rapid transit initiative, with the full latitude of implementing transit and transportation choice and clarifying the ability to prepare community improvement plans.

On behalf of the region, thank you for this opportunity. Bill 51 is a progressive piece of legislation. It's well-written. It gives municipalities a greater ability to shape and enhance their communities for the future. The region is eager and willing to continue to work with provincial representatives to move forward with Bill 51 and to implement our common vision for balancing growth and quality of life.

The Vice-Chair: Thank you very much. We have about three minutes for each party, beginning with the government side.

Mr. Sergio: Thank you for your presentation. Tell me, Mr. Horne, how long it takes to process an application in your municipality, depending on the size of the application, of course.

Mr. Horne: I guess I'd have to ask back, what type of application? A simple zoning amendment could take six months. A plan of subdivision might take two or three years—just anecdotally.

Mr. Sergio: Is five years to amend your official plan long enough? Can you do it in five years?

Mr. Horne: The five-year requirement we can certainly abide by; I think that times have been changing so rapidly that we need to. I like what Bill 51 does in enhancing, basically, what the requirements are for a thorough look. I think five years is appropriate, yes.

Mr. Sergio: How do you get your citizens, ratepayers, to participate in various applications?

Mr. Horne: We basically use the full suite of opportunities: the media, personal notification, our transit buses, any and every opportunity that we can.

Mr. Sergio: Is your municipality in favour of local appeal bodies or boards?

Mr. Horne: Our position is simply this: If provision is made for them to be established, I think we'd welcome that. I know there are certainly two ways of debating them. I would suggest committees of adjustment work successfully. There could be different orders of com-

plexity with another local appeal body, but I think to provide the tool to municipalities is a positive step.

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The Vice-Chair: Mr. Hardeman?

Mr. Hardeman: Thank you very much for your presentation. A couple of areas that we've had some questions on, and you being the person to ask, being involved with the planning applications and the approvals of them, the architecture and urban design approval for municipalities: A lot of people—in fact, the presenter just before you said that he thought that was totally inappropriate that the municipality could design the type of building and the exterior of the building. Do you believe that in the planning process the local municipality is the appropriate place to design, to tell me what colour my building should be or the type of building I should build, providing that I'm building it according to the building code and the requirements of sustainability?

Mr. Horne: I think it's a fine balance. Control of massing and scale at this point, in my opinion, is not adequate. I would agree that we don't want to come down to the point of differences of taste, but I do believe that there should be greater latitude and I do believe that public—in this case, municipal—bodies can be the coordinators of a common vision. That's not to say that it's a unilateral proposition that municipalities would say, "This is what we want."

Mr. Hardeman: Someone brought up the interesting analysis of: What happens if city council doesn't like the looks of a McDonald's—you can't build one in Waterloo? Because they build a standard building.

Mr. Horne: Again, I think it's a good point. The point is well taken and it speaks to why we're here—to talk about that level of detail. I do agree that getting to a certain level of detail may be excessive, but my own opinion is that a greater level of authority with local municipalities in particular is a good thing.

Mr. Hardeman: The other one: We've heard presentations, particularly this afternoon a strong one, that they didn't feel that the changes to the Ontario Municipal Board were going to be positive, or at least not as positive as they could be, because really, the only thing that's changed is that they can't take any new evidence and they "shall have regard to" the municipal decision. Not that they "shall be consistent with" and have to follow it; they just have to look at it. Would you suggest, if you were writing the legislation, that you would strengthen that?

Mr. Horne: I'm comfortable with it as it is. I think it's one step short of perhaps going to a case-law-type of environment. I don't have a problem with it. I know there are other bodies that have suggested that if information doesn't come out early—I guess I'm confident enough that the board would make a decision accordingly to

recognize that if information is coming that's new, that's significant, it would entertain that.

The Vice-Chair: Thank you. We'll move to Mr. Prue.

Mr. Prue: As I promised this morning, I'm going to ask this question. We had a gentleman, Mr. Terry H. Boutilier, the senior business development officer for the city of Kitchener, who said he knew you well.

Mr. Horne: Yes.

Mr. Prue: Okay. He came forward with a proposal this morning to revise section 28 of Bill 51 to allow the city of Kitchener to approach the region of Waterloo so that they could both shoulder the financial burden of new development. You have a statement which is beautifully written but doesn't come right down to it: "enabling prescribed regional municipalities to create community improvement plans and allowing regional and local municipalities to participate financially and collaboratively" etc. Is that what you're saying, or is he talking about something else?

Mr. Horne: We're basically saying the same thing. I think if there's any difference, it's how we're suggesting it be done. Our own preference would be, again, to have a permissive environment. Mr. Boutilier's comments, I think, are more specific to prescribing the city of Kitchener. But in fact, the \$2.5 million that I alluded to as part of our brownfields strategy is in fact sitting and we're waiting to partner with the city of Kitchener on some initiatives but can't consider them, can't get them before council because we don't have the authority. Our take is slightly different; our goal is the same.

Mr. Prue: Okay. When you say it's different, how is it different? If we are going to make amendments, we can't satisfy both of you. How is yours different from his?

Mr. Horne: Well, the approach, as I understand from Mr. Boutilier, is to basically itemize which municipalities would be empowered to implement and invest in each other's community improvement plans. Our suggestion is, instead of doing that, why not simply empower all municipalities with that authority? If you take it that next logical step—I don't think the actual municipal investment will happen unless there is a buy-in, in any event. So regardless of how Bill 51 is structured, investment won't happen unless both upper and lower tier are on the same page. In this case, as I indicated, the city of Kitchener and I are trying to broker something as quickly as we can. Mr. Boutilier's approach is one which would get us there. Our preference is for a broader approach.

Mr. Prue: Thank you.

The Vice-Chair: Thank you very much for your deputation, and have a good afternoon.

To the committee, I'd like to thank you for your attendance today. This committee is now adjourned till tomorrow, Wednesday, August 9 at 10 a.m.

The committee adjourned at 1556.

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Wednesday 9 August 2006

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Mercredi 9 août 2006

Standing committee on general government

Planning and Conservation
Land Statute Law
Amendment Act, 2006

Comité permanent des affaires gouvernementales

Loi de 2006 modifiant des lois
en ce qui a trait à l'aménagement
du territoire et aux terres
protégées

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 9 August 2006

Mercredi 9 août 2006

*The committee met at 1001 in room 151.*PLANNING AND CONSERVATION
LAND STATUTE LAW
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT DES LOIS
EN CE QUI A TRAIT À L'AMÉNAGEMENT
DU TERRITOIRE ET AUX TERRES
PROTÉGÉES

Consideration of Bill 51, An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts / *Projet de loi 51, Loi modifiant la Loi sur l'aménagement du territoire et la Loi sur les terres protégées et apportant des modifications connexes à d'autres lois.*

The Vice-Chair (Mr. Jim Brownell): Good morning, ladies and gentlemen. I'd like to call the committee hearings to order and welcome those who are here today substituting in any way and those who are permanent members of this committee. I hope that you have a rewarding day with the deputants. To those deputants who are here, I wish you well.

Just a couple of reminders to the committee: Amendments are due by August 23, and the due date for written submissions from the public is August 28. I believe clause-by-clause is August 29 and 30. That's just a reminder to the committee.

URBAN DEVELOPMENT
INSTITUTE/ONTARIO

The Vice-Chair: First on the agenda this morning we have the Urban Development Institute. If you would like to make your way to the chair and have a seat, there's water there. You will have 20 minutes to make your presentation. Should you not require the full time, we'll take the remaining minutes and divide them between the three parties and we'll have questions. Welcome to the committee hearings. Please state your full name so it's recorded for Hansard.

Mr. Neil Rodgers: Thank you, Mr. Chairman and members of the committee. My name is Neil Rodgers. I am the president of the Urban Development Institute of Ontario and we are pleased to be here before the committee today.

UDI has many concerns with a number of the elements of the draft legislation as in our view the bill, if passed as currently drafted, would dramatically increase uncertainty and infringe on the rights of private citizens to such an extent as to create an untenable imbalance between the public and private sectors. This, in turn, has the very real potential of making the planning approvals system in Ontario unworkable.

UDI supports consistency with provincial policies and plans, but we have a number of concerns with this particular section of the bill as currently drafted. The proposed changes would impose a rigid rule of law that is at odds with the long-standing common approach of the Ontario Municipal Board and the courts, which is generally to apply policies and plans in effect on the date of application while having regard to the facts and best available evidence.

As well, we are objecting to the lack of certainty afforded by this section, particularly if applicants have filed materials, perhaps through the complete application requirement process, in good faith, as municipalities could potentially delay addressing controversial projects in anticipation of changes to provincial policies or plans and by declaring an application premature or by refusing to make a decision. Without a fair and consistent approach, municipalities and applicants face enormous and potentially paralyzing uncertainty.

UDI recommends that the bill be amended to provide that decisions and comments of approval authorities be consistent with provincial policies in force on the date of application and conform, or not conflict, with provincial plans in force on the date of application.

In the event that the province fails to accept this particular recommendation, we recommend an alternative: that this section of the bill be deleted in its entirety, allowing the OMB and the courts to continue to balance the Clergy principle with the best available evidence.

With respect to transition provisions, the bill as currently drafted potentially allows for the legislation to come into effect retroactively to December 12, 2005. Given the complexities of the bill and the confusion and disorder that retroactivity creates, we do not perceive the need to depart from the province's well-established custom when amending the Planning Act in the past and therefore recommend that Bill 51 come into effect on the date of royal assent.

With respect to introduction of new evidence and material before the Ontario Municipal Board, we take

exception to the provisions in the bill that restrict the right of private parties but not public bodies to introduce new information and/or material into evidence during an appeal hearing at the board. These provisions are inherently unfair, run counter to rights of natural justice and, if these sections of the bill are passed as currently drafted, will create significant administrative and logistical problems, perhaps at the municipal council level, that will add unnecessary costs and delays to an already expensive and lengthy process.

We recommend that the province amend this section of the bill to provide that: (1) new information and/or material be allowed to be introduced into evidence at any time during a hearing of an appeal at the OMB; (2) municipalities and approval authorities be granted the right to bring a motion to return an application to council for review upon the introduction of new information and/or material into evidence; (3) the OMB be granted the authority, upon a motion from the municipality or approval authority, to return the application and the new evidence to council for review along with a request to council to provide a recommendation to the board within 30 days if the board determines that the new information and material introduced into evidence could have materially affected council's decision; (4) in the event that council fails to make a decision on an application, the municipality's right to bring a motion to return the application to council upon the introduction of new information or material into evidence is forfeited.

With respect to rights of public bodies, we assert that the public interest is more than adequately protected during the planning process and that providing public bodies with superior rights during a hearing is redundant and would create an unjust double standard between private persons and public bodies. As provided for in Bill 51, any person or public body that has participated in the planning approvals process has the right to appeal a decision of council and, in the unlikely event that the public or provincial interests are at risk, the minister, through amendments made in Bill 26, may declare a matter of provincial interest.

UDI believes that restricting the rights of persons but not public bodies that have not participated in the planning approvals process is inherently unfair, has the potential to be used in a vexatious and obstructive manner and would allow far too much uncertainty in the planning approvals process. Public bodies that have not participated in the approvals process should be subject to the same restrictions, as contemplated in Bill 51, as private citizens who have not participated.

To provide fairness, we recommend that the bill be amended to prohibit public bodies that have not participated in the planning approvals process from appealing a decision of council being added as a party to a hearing of an appeal at the OMB and introducing new material and/or information into evidence during a hearing.

You've heard a lot about the issue of complete application. We believe that the arguments put forth in support of municipal authority to impose complete appli-

cation requirements have been vastly overstated and that the province's response, through legislative amendment, is excessive. As each municipality is unique, so are the individual sites and applications and their supporting information.

We remain skeptical that the complete application provisions in the bill and the associated regulations can adequately address the complexities inherent in the policy and land use decision-making process in Ontario. Specifically, the development industry is concerned that complete application requirements will be used to frustrate legitimate applications, as the potential exists for approval authorities to establish onerous requirements of unnecessary or costly studies for contentious projects for purposes of obstruction and delay.

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Given the enormous challenges of addressing complete application requirements through regulation and official plan amendments, UDI would prefer to see the establishment of a consensus-based process similar to the models used in the city of Toronto, the city of Mississauga and the town of Oakville, whereby applicants and municipal planning staff decide together what information and studies are required to support the application. If the province does not see its way to accept this recommended alternative, UDI suggests that appropriate tension needs to be incorporated into the system to ensure that applicants are treated fairly.

As our second choice, we recommend, at a minimum, that the bill be amended as follows:

(1) Establish a 30-day deadline after an application is submitted within which the municipality is required to confirm to the applicant whether the application is complete or incomplete.

(2) Require that if the municipality deems an application incomplete, it must provide the applicant with a written list of missing information and/or materials. Once the applicant provides that information to the municipality, the application is deemed complete.

(3) Provide that if the municipality fails within 30 days from the date of submission to confirm whether an application is complete or not, the application is deemed complete.

(4) Grant an applicant whose application has been deemed incomplete the right to make a motion to the OMB as to the completeness of the application or the reasonableness of the municipality's requests.

With respect to restrictions on employment land conversions, we support the preservation of an overall sufficient supply of employment lands as well as the protection of strategically located employment lands. However, we have some concerns with the proposed sections of this bill as follows:

—Historically, a large number of residential intensification projects have occurred on former employment lands through the redevelopment of brownfields, and it is unclear how the province intends to reconcile these three key policy issues: preservation of employment lands, brownfield redevelopment and intensification.

—The proposed restrictions on appeals are very broad and include the potential to frustrate appropriate regeneration and intensification projects.

—The definition of “area of employment” is unclear, particularly as it applies to mixed-used and regeneration areas. For example, the redevelopment that is occurring along many of the city of Toronto’s avenues is including retail uses at grade with office and/or residential above.

In light of the foregoing, we recommend the following:

(1) Stipulate that the sections within the bill regarding areas of employment are not applicable within a municipality until such time as the municipality has updated its employment land policies within its official plan subsequent to the bill coming into force. This will afford municipalities the opportunity to review and seek input regarding appropriate employment designations in light of the proposed amendments to the Planning Act in this bill and the Places to Grow conformity exercises that are taking place, primarily within the greater Golden Horseshoe area.

(2) Ensure that employment land definitions and policies are consistent and integrated with other provincial policies and legislation, particularly the provincial policy statements, the recently released Places to Grow plan, brownfield policies and other initiatives.

(3) Provide for a definition for mixed-used areas.

(4) Amend the definition of “area of employment” to clarify that the proposed restrictions do not apply to mixed-use areas such as office/residential or commercial/residential.

(5) Include major retail uses in addition to manufacturing, warehousing and office facilities in the definition of employment areas, as they provide significant employment opportunities within the communities.

With respect to a number of issues, including energy conservation, land dedications and parkland dedication, we have a number of issues.

UDI supports sustainable development but has concerns with the proposed sections of Bill 51 that address energy conservation, land dedications, design review and parkland dedication. These sections would allow municipalities to require substantially increased land dedications and set high design requirements at the sole expense of the applicant. Municipalities may provide incentives in the form of a reduction in payment in lieu of parkland dedications, but only if the applicant proposes land for redevelopment and meets sustainability criteria yet to be determined and as determined by the municipality. These dedications and requirements—for example, through municipal control of exterior design as relates to sustainable design, i.e., green roofs—may add significant costs to the applicant. As the bill does not provide any incentive for municipalities to work co-operatively with proponents, we foresee municipalities making excessive demands without concern as to their prohibitive cost, potentially threatening the economic feasibility of development and redevelopment applications.

Therefore, we recommend that the province amend the bill to require municipalities to offer applicants an off-

setting credit on their parkland dedications, payment in lieu of parkland conveyances and/or development charges arising from these dedications and requirements.

With respect to parkland dedications, we are troubled that the province has not utilized this opportunity through the bill to address the oft-stated concern to the development industry regarding parkland dedication. UDI contends that the Planning Act is vague regarding parkland dedication requirements, often resulting in municipalities interpreting parkland dedication or payment-in-lieu provisions with the goal of maximizing land dedications and revenues rather than providing appropriate park facilities.

UDI submits that the parkland dedication provisions in the Planning Act need to be amended to more accurately reflect the true cost of providing park facilities to accommodate increased population. UDI believes that the Planning Act is being misinterpreted in many examples in Ontario and requests that the province clarify this issue by amending the Planning Act through Bill 51 to explicitly state that the conveyance of parkland be required at the draft plan approval stage, or payment in lieu of parkland dedication be calculated based on the value of the land on the day prior to the day of draft plan approval.

With respect to official plans—I’m going to consider the timing here—in order to facilitate increased certainty to landowners, ratepayers, municipalities and private citizens, UDI is of the opinion that municipalities need time limits within which they must review and update their official plans as part of the mandated five-year OP review. A mandated deadline is particularly important, as many of the bill’s provisions and regulations do not come into effect within a municipality until its official plan is up to date. We submit that conflict is substantially reduced when stakeholders have the same expectations of what the rules are and when they are likely to change. We also submit that the province routinely imposes limits within which municipalities are required to update their official plans to conform with provincial policies and plans. The Places to Grow legislation, the greenbelt and the Oak Ridges moraine are a few examples.

We recommend that the bill be amended to require municipalities to complete their OP review update within three years from the date of commencement of the OP review.

In conclusion, we are committed to the principles of fairness, accountability, transparency and certainty. We have based our recommendations to you today on these principles and are hopeful that the members of the committee will see fit to balance these interests and amend the bill accordingly. Thank you, Mr. Chairman.

The Vice-Chair: Thank you for your presentation. We have about a minute and a half for each party, so we’ll start with the official opposition.

Ms. Lisa MacLeod (Nepean–Carleton): Thank you very much, Mr. Rodgers. It was a very well laid out presentation, something that of course many people, many of the deputants, have brought to us in the last little while.

Yesterday we did hear a lot about the retroactivity clause and the dangers that will bring to your industry. I'm wondering if you could expound upon that, some of the dangers that you think your industry will face. You touched on it, but I think it's worth noting publicly right now.

Mr. Rodgers: The bill was introduced December 12, 2005. It's probably fair to say that once this bill gets back on the floor of the assembly, it could be the end of the year. So a year will have passed. A lot of the provisions in the bill, as I said in my closing remarks, come into effect when official plans are updated. In that period of time, a year, a lot has happened in the industry. A lot of applicants have continued to work in good faith with municipalities in meeting their requests, in dealing with ratepayer groups and other organizations to understand their concerns and incorporate them into their development applications. To turn back the clock and say, "No, this bill comes into force December 12, 2005," would, I think, send the industry and municipalities into a tremendous amount of uncertainty. Municipalities won't know how to deal with certain applications.

1020

Ms. MacLeod: Is it fair to say that there might not be a uniform approach to this, that some developers might be brought into question here and others might not be?

The Vice-Chair: Quick answer.

Mr. Rodgers: That is fair to say, yes.

The Vice-Chair: Thank you. Mr. Prue?

Mr. Michael Prue (Beaches-East York): Due to your time constraints, you skipped the portion on design review. I want to go back to that because we had a couple of deputations on that yesterday, saying that this was an infringement upon the rights of people to build the kind of buildings that they were capable of building. You have recommended that these sections be deleted, allowing municipalities and applicants to continue to work together in good faith.

We also heard about having peer reviews or other groups—rather than having bureaucrats say what colour brick, you have a peer review to describe building materials. Can you describe what you really want here? You skipped it.

Mr. Rodgers: We're not convinced that architectural control will make the concerns of ratepayers or of local community groups any less. It's a very, very subjective process. Our preference, rather than having architectural control, would have been an urban design review panel. We have had a number of consultations with the city of Toronto, which is well advanced in this area of research. We are concerned that innovation and creativity may be stifled by perhaps overzealous municipal staff trying to deal with the interests of local politicians and the ratepayers. We're not seeing this as a win-win. We think it's potentially a very bureaucratic process that may not necessarily lead to the result that I think the government and the public want.

The Vice-Chair: Thank you. Mr. Sergio?

Mr. Mario Sergio (York West): Mr. Rodgers, thanks for coming down and making a presentation to the committee this morning.

We believe that public participation is very important during, especially, the initial process of an application. You think that the provincial response is "excessive" to some of the others, and this one here as well. How do you expect to have the public engaged early enough, especially when an applicant doesn't supply enough information to the local municipality?

Mr. Rodgers: If I recall, the word "excessive" was used perhaps near the beginning of the bill.

Mr. Sergio: Yes.

Mr. Rodgers: I think when the bill was first drafted, it was drafted primarily with the municipality and the municipal concern in mind. Public participation in Ontario has worked very, very well. The most significant amendment to the Planning Act was probably in 1983. Before that, public participation was really hit and miss. So I think what we're seeing here is, there's a point in the process where perhaps there is too much public process. It gets bogged down in committee hearings and public hearings and all that other stuff. I think our industry does a very good job of pre-consulting with our municipal partners. It does a very good job of knowing who are the right people in the community to speak to. I think the ones that make the newspaper, the ones that get sensationalized, are a result of media, and I think this bill has in some respects caught that attention. But I think it's not as bad as the picture is painted from time to time.

The Vice-Chair: Okay. We will have to stop at that point. Thank you very much for your deputation, and have a good day.

DAN THOMEY
JOHN MORAND

The Vice-Chair: Next, we have Dan Thomey and John Morand. Welcome. Once again, 20 minutes for your deputation. Any time remaining in that 20 minutes we will split between the parties for questions. Feel free to have a seat.

Mr. Dan Thomey: Ladies and gentlemen, thank you for having me here today. My name is Dan Thomey. I'm a farmer. I represent the Dale Road ratepayers' association just north of the town of Port Hope. We've been in existence since 1982.

There's good and bad to Bill 51 as far as Port Hope is concerned. With few exceptions, Bill 51 is the best legislation proposed in Ontario for years. As a farmer, I've travelled the roads to the food terminal, to downtown farm markets for the past 25 years and I can really appreciate what gridlock is all about. Having said that, I feel that Bill 51 is going to severely damage our town of Port Hope, as Port Hope is a very, very sick community.

Port Hope is contaminated with radioactive waste. The nuclear industry came to Port Hope in 1932. Our greatest claim to fame is that we manufactured the material that was used to do the atomic bomb. Presently, Port Hope

manufactures all the material that fuels our CANDU reactors, so it's a very important industry. Our problem is that when the industry first got started in Port Hope, they really didn't know what they were doing and they indiscriminately distributed all kinds of radioactive waste all over the town. To give you a visual idea of how much waste was distributed around Port Hope, if you took a train from Port Hope to North Bay with gondola cars, it would take that length of the train to move all the waste out of Port Hope. The single most dangerous commodity within this waste is arsenic. We have one dump in the middle of town that has 27 tonnes of arsenic in it. If it got into the water system of the city of Toronto, it would kill every person in the city.

One of the other problems we've got is they mixed this waste in with local municipal waste. We have a dump in town that has to be uncapped after 25 years of rotting in the middle of town. It's going to be so putrid when they open this waste site up that the federal government has arranged a buyout program for the people immediately around that dump site so they can have some relief if they can't stand the smell.

They say that it's going to take us seven years to clean this waste up. We don't have a start date yet. They're talking about 2008. Experience has shown that every time they put a shovel in the ground, they come up with twice and even three times the amount of waste that they estimate they have, so it could take up to 14 or even 20 years to clean this waste up.

Our town is seriously divided. The people who work in the nuclear industry within the town have enjoyed very good wages over the years. The people who do not work within the industry are very cautious of the industry now because of all the waste and pollution that has taken place. They're very scared. It's a matter of trust and believing how much damage is done by this waste.

On one side of the fence are Cameco nuclear and Zircatec industries, which are both owned by Cameco. On the other side of the fence is an organization called FARE, Families Against Radiation Exposure. FARE has 1,500 members within a town of 12,000, which is quite a substantial organization within the town, and they're putting pressure on to clean it up and move it out, that type of thing.

For the last seven years we've been working within the official plan. Our problem is that when we got involved in our official plan, we hired a Meridian consultant to do an official plan and, within that official plan, GGA Ltd. to do an economic development vision to incorporate within that official plan. The problem is that the two consultants have different points of view. GGA thinks that the town should have a new industrial park outside of the town, because they have identified our greatest problem as the stigma around our nuclear situation and our lack of a cleanup to date. Meridian, on the other hand, taking the lead from municipal affairs in Kingston, has said that we have to intensify, no matter what. The problem, of course, is that over the past 30 years we have not been able to intensify—there's all

kinds of vacant land within the town—mainly because of the stigma that revolves around the nuclear situation. So we're in a Catch-22. What we would like is for the municipal affairs people to revisit Port Hope, revisit Northumberland. We deserve a chance at a reasonable life. If Bill 51 is applied to Port Hope at this point in time, because of our specific problems it will be another 20 years before we start to clean up and then be able to sell some of those lots within the town.

1030

That's what we want. We want this committee to recommend to municipal affairs to revisit Northumberland, revisit Port Hope, have a look at Northumberland's position. We would like to see Northumberland designated as a growth area similar to Peterborough and revisit the specific problems within Port Hope. That's why we're here today, ladies and gentlemen. I thank you very much for your time.

The Vice-Chair: Thank you. We have about four minutes for each party. Oh, I'm sorry.

Mr. Mel Edwards: Mr. Chair, I would like to say one thing. My name is Mel Edwards; I'm not John Morand. Morand couldn't be here. I've been a real estate agent for that area since 1988. Recognizing the fact that there is nothing to develop within the borders of the urban boundary now, we want to extend it to the north and rather to the west. They were forced to go to the west in 1990, by increasing the parts per million of those carcinogens from two to 15. They are now living on contaminated land and they want to push even farther west if they're going to develop any kind of industry. So the north would have the place for the industry. I've had to refuse some of the industries I've got like a bird in the hand because there isn't the population or the land to support it. One in particular was a 450,000-square-foot building for 600 people, and it was turned down. So Bill 51 should be revisited. The population growth of 16,000 from 2001 to 2021 for the whole of Northumberland—we want to put that many people in Port Hope to take the business down there.

I thank you for listening to my submission.

The Vice-Chair: Thank you. My apology for not recognizing you right off the bat.

We will go to questions. We have about three and a half minutes for each party. We'll start with Mr. Prue.

Mr. Prue: I'm sorry. I had to go out of the room very briefly, so I might have missed some of it. I'm having a bit of difficulty understanding how your deputation relates to the actual bill itself. It's the Planning Act and the Conservation Land Act. What have I missed? I understand that you want better development in and around your town, I understand about the waste and the economic difficulties, but how does that relate to the particular act we have before us?

Mr. Thomey: Bill 51 is going to force the intensification within the town of Port Hope, and it's not possible. Nobody's buying. We've got all kinds of land immediately around Zircatec, on three sides of Zircatec. They've been trying to give that land away for years, and

there are just no takers. Everybody gets wind of the problems that we have with the contamination and backs out; they go elsewhere.

Mr. Prue: So you want Port Hope to be exempted from the act?

Mr. Thomey: We want the Ministry of Municipal Affairs to revisit Port Hope and take the pressure off intensification. We need some scope here, we need some latitude here, because of specific problems that we've got.

Mr. Prue: I just want to understand. Do you know of any other towns or cities or anyone else who might or should be exempted for similar problems?

Mr. Thomey: I've never seen anything quite like Port Hope; really, it's that bad.

Mr. Prue: Thank you very much.

The Vice-Chair: Thank you. Next we'll have Mr. Rinaldi.

Mr. Lou Rinaldi (Northumberland): Welcome to Queen's Park. I didn't recognize you as my constituents, I guess, first of all. I know Mr. Morand quite well and I was trying to picture him in the crowd here today and I didn't see him.

Anyway, you bring some concerns related to Port Hope which—it's a long story; we could be here for a while, and the time doesn't permit it. But as you know, there is an extensive—mostly initiated by the federal government—cleanup process. I think the community has been well engaged in that process. Whether it's perfect or not perfect—I'm not an expert. What I would offer you today, because I concur with my colleague Mr. Prue: I'm not sure all this fits in with Bill 51 specifically. Being the first time I've heard it, and being the member for that riding—I had quite an engagement with Places to Grow legislation, which deals more with intensification and those things—I'd be more than happy to sit down with you at your convenience and maybe set up a meeting with some of the folks. I have been working with the community to address those issues of intensification, not just for Port Hope but for the whole of Northumberland, because that's part of the greater Golden Horseshoe, that growth plan. There are some concerns, I agree with you, on some of those numbers, and I've been working with the mayors and the county very, very closely to address those issues. I'd be more than happy to sit down with you folks at your convenience.

Mr. Thomey: I appreciate that very much.

Mr. Edwards: May I address that for one more second? There have been two studies done very recently, and they're only a couple of months apart: GGA and Meridian, and they contradict each other. What we're facing now is the urban boundary that they created with the first report, which takes it up to Dale Road, which would be sufficient for the 2021 goal. The next one, Meridian, has suggested that we don't need that extra land. There isn't any other land to be had. I know from first-hand experience that they just can't get the land that they need for the growth that they should have.

The Vice-Chair: Ms. MacLeod.

Ms. MacLeod: I would be willing to forgo my questioning if Mr. Rinaldi would like to speak with his constituents on this, because I think the three parties have agreed that maybe they're actually talking about an issue that might not be best suited for this bill. So would you—

Mr. Rinaldi: I'd be prepared to meet with them outside. I don't want to hold up things here.

Ms. MacLeod: Okay. Just quickly then, I'd like to ask the deputants: Section 23 of this bill would allow energy-related projects to be exempt from the planning process municipally. I'm wondering how you think that would impact Port Hope, meaning, somebody could build a nuclear power plant in your community without it going to your municipal government.

Mr. Thomey: I think the nuclear industry is that important and I think the powers that be are wise enough to put big enough buffer zones around their plants. I wouldn't have a problem with that. I know some people would, but I personally wouldn't have a problem with that.

Ms. MacLeod: Okay. Do you have anything to add, sir?

Mr. Edwards: Wesleyville would be a perfect place to have the energy spot—

Mr. Prue: You stepped into that one.

Ms. MacLeod: I'm wondering if this is a set-up by Lou to get some—

Mr. Edwards: Darlington had their problems after they put four more in there. We have the cement, everything, readily available for putting the foundation—continuing the foundation, I should say—and bringing the people in to work. There's no place for them to live. They have to come in from outside. The middle of Port Hope is dead to construction. Outside of Port Hope they're building on radioactive land now; there's nothing else available. I'm going broke as a real estate agent because of it.

Ms. MacLeod: Thank you very much.

The Vice-Chair: Thank you for your presentation this morning. Have a good day.

ONTARIO ASSOCIATION OF ARCHITECTS

The Vice-Chair: Next we have the Ontario Association of Architects. Please step up, make yourself comfortable. There's water. As with the other presentations, you have 20 minutes, and the remaining time not used will be divided between the parties. As well, if you're both speaking, please state your names at the outset of your presentations so that Hansard has a clear record. Welcome.

1040

Ms. Kristi Doyle: My name is Kristi Doyle. I am the director of policy at the Ontario Association of Architects. I thank the committee for inviting us here today. The OAA, for those of you who don't know, is the self-regulating organization for the profession of architecture in Ontario. We have already made a formal written submission to the committee on this issue; however, we wel-

come the opportunity today to make an oral presentation as well. While we understand the government's goals and objectives in amending the Planning Act, we do have some issues and concerns that we would like to voice.

I would like to introduce our president, architect David Craddock, who will review and highlight some of the key elements of our submission.

Mr. David Craddock: Good morning. I'm David Craddock. As Kristi mentioned and as we put in our submission, we are quite supportive of the legislation. We have some minor concerns that we'd like to address. I'd just like to highlight. In our submission to you, we had what we considered five major points.

The first was that we think we need to establish planning frameworks that basically include community design objectives. Our concern is that with the sizes and differing compositions of municipalities, there is not, shall we say, a very uniform standard throughout the province of planning principles and policies in place. We are a bit concerned. We think this legislation is well directed and sweeping, but I think particular concern needs to be addressed to individual municipalities. Municipalities such as Toronto, which has extensive planning background, will be able to adapt to it. We are concerned that many of the smaller municipalities, though, will need guidance from the provincial government on how to do this.

The second one: Link zoning conditions with development opportunities. We think that the ability to apply zoning conditions, including architectural and sustainable design, is a significant new power available to municipalities. However, the OAA is concerned that, along with that authority, municipalities should offer reciprocal benefits to developers. In effect, we're saying that they should be able to know, when they enter into a process, what they're required to do but also the benefits that can accrue to both them and the community by going through this process.

The third is probably our most important one. We feel that we need to ensure there are consistent design policies, development standards and processes with clear limits. This basically says that the OAA recommends that consistent urban design and built-form policies be established through regulation and throughout the province, because I think uniformity is something that is critical to the design community and also the development industry. Our concern is that right now we're going through a rather radical, in our terms, change in policies at the building department level with the permit process. This whole process, which has been going on for three years, underscores the need right at the bill and regulation level that attention be given so that it's uniform, because many of the problems we're experiencing now, the delays in permits and issuances that the development industry and the design community face, are just the result of not having a uniform process throughout the province. The intent was there when we started, but we've had difficulty getting consistency in every municipality.

The fourth is that we would recommend that design professionals should be consulted and involved in the

entire municipal design review process. By "design professionals"—while we, of course, are an association that represents one body, we also believe that there are basically four groups you should consider.

Municipal staff architects and designers: Many communities have them. On the other hand, many communities are not able to afford them or do not have them. I think it should be a requirement, if they are going through this process, that municipal staff have architects or qualified designers on their staff. On the other hand, design consultants can be retained by communities to provide the service. We also think the design review panel process is a very viable alternative. You will find attached to our submission a fairly lengthy, detailed model of one such process of a design panel. It's something that has been tested. For example, I think many of you will know that Vancouver has been doing design review panels quite successfully for over 10 years. The experience we've heard from architects and also from builders in that area is that the quality of design has improved, and also the speed at which the processes occur, because it goes through a design panel, and by the time it reaches the permit process, many of the issues that arise now at that level have already been addressed and taken care of.

Basically, what we're saying is that we need to establish a model urban design and built-form policy guideline and design review process for all communities in Ontario. Uniformity, I think, is key, because every community has different needs, but on the other hand, I think they can be addressed in a uniform way.

Our submission, as you probably will have read, is that we, as the design community, are interested in assisting both the province and the municipalities. That's the basis of the presentation that we had in our submission.

Thank you, Mr. Chair.

The Vice-Chair: Thank you. We have about three and a half minutes.

Mr. Prue: If I could, Mr. Chair, I have to duck out, so I'll cede my time to the others.

The Vice-Chair: Okay. Thank you.

We will start with Mr. Sergio.

Mr. Sergio: Thank you for coming down and making a presentation to the committee. We value very much the input of various groups, and especially one such as yours.

With respect to industrial lands, and residential as well, do you believe that you should have the same controls and criteria apply to industrial land as to residential?

Mr. Craddock: Yes, I believe so. For example, in the city of Toronto there's a current issue going on in our waterfront, where we have a minor issue of industrial uses colliding with residential communities immediately next door. So I think there have to be different standards, and then different issues will be addressed. That's where I think good design review would take that into consideration, issues that we were hearing earlier, perhaps, in Port Hope, things that are particular. I think you'll see in our brief that we feel that this type of process is ideal for

communities that are specific. That's what we're trying to say. There is not going to be a model policy that will work for every town in Ontario; in fact, it's the reverse. Every town probably needs to be different, to take into account whether it is strictly residential or has industrial or has an historical characteristic that needs to be preserved.

Mr. Sergio: During the hearings, we heard from some proponents from the various industrial and residential sectors that this would be another way of perhaps extending the process, and it may be costly as well. Do you really believe that this would extend the process or that it would be costly in any way?

Mr. Craddock: I would answer it—I'll maybe let Kristi as well. We believe that it has the possibility of it if it's not handled properly. That's what we're getting at. As I say, in Vancouver, where they are doing the preliminary review, it's been in existence long enough. People understand the route and also the timing. They've basically been relatively successful, using the peer panel system, to concentrate on the issues early enough so that it speeds it.

It's like having any process where you know the time frames; you can take them into account. That's what we're getting at in our submission, why we believe the legislation has to have the framework clearly delineated so that basically all the players—the designers, the developers, the property owners—understand it and know that there is a sequence, that it isn't just something that might be two months in Port Hope, might be five months in Toronto, might be a year and a half in some other municipality. It has to have uniformity, because realistically, I think the bottom line for Ontario is that if it's not uniform, the communities that have longer time frames—and that perhaps in turn means higher costs—are at an economic disadvantage.

Mr. Sergio: Thank you.

The Vice-Chair: Ms. MacLeod.

Ms. MacLeod: Thank you very much, Mr. Craddock and Ms. Doyle.

I'm very intrigued by the design review panel. We heard a deputant yesterday in the hearings talk about it. I met with the city planner of Toronto last night, who also spent some time in Vancouver with that process. You've given us a fairly detailed proposal, which hasn't been read into the record. I'd like to give you an opportunity to discuss the design review panel for the people who are watching at home and the people who are here today who don't have this piece of paper in front of them, because I think it's a worthwhile idea.

1050

Mr. Craddock: In our submission, appendix A, one of the members on our committee designed basically and suggested, in reviewing the process, what he called the model design review. In it, the core ideas on the first page—maybe I'll read that. "It may be argued that third-party design review promotes or establishes community character by ensuring that certain urban design and architectural principles are followed. Design review can

reinforce community identity in protection of a valuable asset or serve to regain lost identity, improve quality of life and create investment opportunity."

The rest of that brief—and we don't really have the time, unfortunately, to read it through—sets out a suggested process that says what the process is, when input is required by the applicant, when input is required by the municipality to review it. It sets governing submission requirements—and this is important—so that when an applicant or a developer or an owner comes in, they know going in what the application requirements are. That's huge, because if you go to a process where you come in and then find you need different numbers of drawings or different types of studies, that takes time. So it's saying that it's essential is to know the submission requirements. To know the process is key: the composition of a review panel, the timing, the schedule dates, having an organization known. It's sort of a transparency and an organization. We say that that type of process could probably be consistent throughout the province.

Ms. MacLeod: So you think that a design review panel included in this bill would actually significantly improve the bill?

Mr. Craddock: I think it would, because I think a few of the other submissions that you've received, and a few that we've seen, suggest there are stakeholders in the community—we represent one portion of it; the development industry, municipal councils—there are a lot of groups that want to become involved. Again, we're starting to see it in others. As I mentioned with Bill 124, there's more involvement in the industry as a whole. People are being much more open and collaborative, and I think this bill has that same opportunity.

Ms. MacLeod: Excellent. Thank you very much.

The Vice-Chair: Thank you for your presentation this morning. I wish you a good day.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Vice-Chair: Next we have the Canadian Environmental Law Association. Welcome. Make yourself comfortable. There is water. As with the other deputations, there's 20 minutes. Should there be time not used in your presentation, we'll divide it between the parties. Please state your name for Hansard purposes.

Ms. Jennifer Agnolin: Thank you, Mr. Chair. My name is Jennifer Agnolin. I'm junior counsel with the Canadian Environmental Law Association, also known as CELA. CELA is a non-profit public interest organization that was established in 1970. CELA's mandate is to use existing laws to protect the environment and to advocate for environmental law reform. CELA is also one of 15 specialty legal aid clinics in the province. We act on behalf of citizens or citizens' groups who are otherwise unable to afford legal assistance at hearings and in courts on environmental law matters.

I'd like to thank the committee for giving CELA the opportunity to speak today about Bill 51. CELA has been

extensively involved in land use planning and environmental law issues over its many years. During its three decades of existence, CELA lawyers have represented countless clients before planning tribunals, including the OMB and the consolidated hearings board.

It is this public interest mandate and background that feeds my comments today. These comments are also summarized in a written submission that was made by CELA dated February 24, 2006; it has been passed around the room.

In short, CELA is very supportive of Bill 51. We believe it is a strong step forward in creating a planning process that is responsive to the needs of municipalities, that enhances local democratic decision-making, and that will help create more environmentally sustainable and vibrant communities. In particular, CELA supports the following provisions: changes that allow municipalities to define "complete" applications; the requirement that the OMB have regard for decisions of council; the requirement that official plans be reviewed every five years; and enhanced public consultation for official plans.

CELA does, however, have very strong concerns with three provisions of the bill.

The first two concerns deal specifically with public participation and changes that we believe will severely limit the public's ability to effectively participate in local planning decisions.

To provide context, I'd like to explain that a very important part of my job at CELA is screening legal intake. I receive numerous calls and e-mails each week from citizens all over the province who have various environmental law issues and questions. A large portion of these calls relates to local planning, and specifically to hearings before the OMB. It is CELA's experience that it is already extremely difficult for private citizens and public interest organizations to effectively participate in OMB proceedings. Citizen participation should be enhanced and not limited.

First, CELA strongly objects to the proposed subsection 34(24.2) that restricts evidence permitted at OMB hearings. We understand that the motivation behind this section is to ensure that all of the relevant information pertaining to an application is submitted to councils before they make a decision and to preserve the role of the OMB as an appellate body. As stated earlier, CELA is in support of achieving this goal; however, this goal is accomplished largely with (a) the complete application provision and (b) the provision that the OMB must have regard to council decisions. The need for this section, therefore, does not exist. The result of the restricting-evidence provision instead has a disproportionately negative impact on the public's ability to meaningfully participate in appeals at the OMB.

Applicants have the time, business incentive and financial resources to prepare full applications before council. Members of the public have none of these advantages. It can take months for public interest groups to raise the funds necessary to hire the experts and

lawyers to properly evaluate an application. Further, it isn't known to the public if this extreme effort is necessary until after a planning decision is made. The effect of limiting evidence, therefore, means that only the most affluent members of the public will be able to participate in planning appeals. This barrier to public participation results in significant inequities and less meaningful public access.

CELA's second concern is with the provisions that restrict the right of appeal of council planning decisions to public bodies and to those who made oral presentations at a public hearing before the decision was made. Currently, any person is allowed to appeal a planning decision to the OMB. There has been no indication or public discourse that there are problems with the current status of appeal rights. We are unaware of any need to change them. The change that has been proposed will effectively shut out a large portion of the public from the OMB. In many circumstances, residents do not become aware of a proposal or a council decision until they see a notice in the local newspaper after a decision has been made. Limiting appeal rights in the proposed manner effectively shuts out this large section of the public. This is the only group whose appeal rights are being impacted in Bill 51. CELA recommends that the proposed subsection 34(19.1) be deleted on the grounds that it is unjustified and contrary to the public interest.

Finally, CELA is strongly opposed to section 23 of the bill relating to energy undertakings. This section exempts from the Planning Act energy-related undertakings that have been subject to an environmental assessment and those that have been exempt from being subject to an environmental assessment. Energy-related projects can be characterized into three categories per the Environmental Assessment Act: those that are subject at some level, those that are specifically exempt, and then the remainder. Regulations promulgated under the Environmental Assessment Act, namely Ontario regulation 116 and sections 14 and 15 of Ontario regulation 334, purport that all energy-related undertakings that are not specifically exempt or covered by the Environmental Assessment Act are to be considered exempt. Effectively, the remainder category is considered exempt.

The effect of section 23, then, is that virtually all energy-related undertakings are exempt from the Planning Act. This means that important site-specific issues related to zoning, such as setback requirements, construction, traffic and overall official plan requirements, are not going to be considered at all for energy projects. The environmental assessment process, where it's actually implemented, does not cover these issues at all. These issues may be dealt with at a cursory level, but it's not required. Further, few energy projects right now are subject to full environmental assessments under the current regime.

In conclusion, CELA strongly supports Bill 51 and believes that it will create a better planning process in the province. However, the public must remain an important part of the planning decisions and it is CELA's strong

concern that the current changes could effectively shut out public interest groups from the process entirely.

Thank you again for this opportunity.

The Vice-Chair: Thank you very much. We have about six and a half minutes. I believe it's Ms. MacLeod. 1100

Ms. MacLeod: Thank you very much for your presentation today. Your concerns have been highlighted in the last three days of hearings that we've had on this bill; specifically, section 23 and the removal of the process for energy-related projects. How would you involve the public more in this? Do you suggest that we should maintain or remove section 23 entirely so that municipalities have a right to continue to be involved in the public process?

Ms. Agnolin: The latter of the two. CELA believes that the entire section 23 should just be removed and the municipalities should maintain the powers they have now with relation to zoning over electricity projects.

Ms. MacLeod: Just quickly, on the OMB and new evidence and that it can only be brought forward by a public body, obviously, we've heard some people oppose it and some people approve of this. But one of the big concerns I think a lot of people have is that public groups that are non-business or non-development, like citizens' groups or environmental groups, won't have an ability, after a council has made a decision, to introduce new evidence. What would you suggest? Would you suggest an approach that some of the developers have actually advocated, which is sending something back to council rather than the OMB shutting down new public evidence?

Ms. Agnolin: One possible approach that I believe has been suggested by the Pembina Institute is to develop a test where an interested party could show that the evidence would be necessary. I understand that the OMB, in the current Bill 51, does have some discretion to allow evidence to be submitted. I'm not familiar with the developers' submission. However, I do believe that at the moment, in the way it's put together, there's a lot of discretion at the OMB level. It's not quite known why this is even necessary, as I said in my submission. The requirement for complete applications addresses many of the concerns right now, so our suggestion is just to eliminate that section completely.

Mr. Kevin Daniel Flynn (Oakville): Thank you for your presentation. Just from the outset, I want to say how impressed I've been with CELA, from its early days to now. I think that one of the things you've really done over those years is to stand up for the little guy. When there has been an application to be fought, when there has been something to be done, CELA has been there. So I'm a little taken aback that you would suggest that we take section 23 completely out of the bill. With the background that I have in OMB reform, one of the things that was felt by the councils, representing the little guys in town as well, is that quite often the appeal that ends up on the desk of the OMB looks nothing like the application that was dealt with by council. So while I'm

sympathetic to your saying that there should be the allowance for the new evidence, can you suggest a way that we could allow the new evidence yet at the same time ensure that the application that was heard by council is the one that is actually the subject of the appeal to the OMB at the end of the day?

Ms. Agnolin: I think that's covered to an extent by allowing the municipalities to define what a complete application is. I think one of the main concerns right now with the difference between the applications that are going before council and the applications that are going before the OMB is that there's no control right now by municipalities to define a complete application. Therefore, decisions are effectively made with very limited information. I think that, to an extent, is addressed by the requirement for complete applications and for municipalities to have that power now to require more information. I think that addresses that particular issue to a great extent. It requires applicants to put the money forward at the early stages and take the initiative at the very, very early stages instead of doing that later on. Then it's up to them if they have the resources to make repetitive—I don't understand why they would make repetitive applications and do continued work. I do think it's addressed by that requirement for complete applications.

Mr. Flynn: The other impact of the status quo, if you will, is some of the costs that are involved. In Oakville, which I represent, there was a fairly high-profile case that looked like it was headed for the OMB at one point, where the costs were estimated to be in the range of about \$13 million on each side, for the developers and for the municipality. You're a lawyer, so that may be good news to you, but to the rest of us in town it wasn't.

Ms. Agnolin: I'm a legal aid lawyer.

Mr. Flynn: I understand. That was an awful lot of money to the rest of us. It seemed to me that you need to scope the issues in some way. This would seem to be a way of ensuring that the application the OMB hears is actually the application that has been dealt with by the preceding public process that was employed by the council. So you're saying that the other aspects of the bill that are being proposed in Bill 51 would more than cover off the elimination of the introduction of new evidence?

Ms. Agnolin: Exactly. The combination of the municipality being able to define complete applications and the OMB having to have regard for the council's decision, we believe, effectively covers that issue.

Mr. Flynn: Very good. Thank you.

The Vice-Chair: Thank you very much for your deputation, and have a good day.

CITY OF MISSISSAUGA

The Vice-Chair: Next we have the city of Mississauga, Mayor Hazel McCallion. Welcome. Make yourself comfortable. As with the other deputations, you have 20 minutes for the presentation. Should there be time remaining, it will be split between the three parties. For

Hansard purposes, I believe I already read that you're going to introduce yourself and others who may be speaking.

Ms. Hazel McCallion: Thank you, Mr. Chairman. It's great to be back again on legislation that's going through the House. I'd like to introduce, to my right, Ed Sajecki, our commissioner of planning, and to my left, Mary Ellen Bench, our solicitor. We appreciate the opportunity to come before the committee.

In the beginning—it's not in the presentation—I want to congratulate the government. The municipalities have been asking for changes to the OMB for years: the make-up of it, the process that we've experienced over many years. As you know, Mississauga has experienced a lot of development. We do not believe that the OMB should be eliminated; we believe there should be right of appeal by the developers, the citizens and the municipality. But we are very pleased with the changes that have been made to the OMB. We have concerns about some, of course, but this government at least has started the process, which is extremely important.

As you know, I've been a member of AMO for years, and we've been asking for changes to the OMB. I give you an example of a development in Mississauga—I heard that Oakville's was \$13 million but ours was \$5 million—in which the citizens opposed the conversion from industrial to residential, the city opposed the conversion and the industrial development around the acreage opposed it, and yet the cost of the hearing was \$5 million—a waste of money when we need it for gridlock and all the other things that municipalities need for infrastructure. One person heard it, and fortunately it was in our favour, but a lot of money.

So thank you for this opportunity. As I say, the provincial government is to be congratulated for its planning reforms and for recognizing the importance of the role of municipal councils in land use planning. Strengthening the role of municipal councils and residents is important if we are to see communities grow and develop to their maximum potential. Bill 51 is a good step toward, balancing the role of the province in ensuring growth occurs in a coordinated and strategic fashion, with a role for municipalities to ensure the local perspective and character are not lost in the process. Bill 51 is also important in returning the Ontario Municipal Board to its original role as an appeal body on local planning matters and not the main decision-maker.

In so doing, Bill 51 is very significant to Mississauga because, as the focus of development shifts from green-fields to infill and intensification, consideration of re-development and intensification proposals will inevitably result in the need for municipalities to have access to full and complete information respecting development proposals that can be shared with local residents and businesses that will be impacted by these decisions.

You have received a copy of our commissioner of planning's report dated February 7, 2006. Although the city of Mississauga largely supports Bill 51, this report contains a number of recommended amendments to the bill that are supported by city council.

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First and foremost, Mississauga has grave concerns about the total loss of local planning control over energy undertakings, which will be exempted from the Planning Act by Bill 51 if they are approved under or exempt from the Environmental Assessment Act. We do not suggest that municipalities be permitted to prohibit these facilities, as that would not be responsible. We are, however, suggesting that municipalities should be able to identify appropriate locations for them in accordance with good planning principles. Just to add, we have worked with the OPA and with OPG to come up with a policy for the city of Mississauga to allow energy production plants in the right locations under the right conditions. We are not opposed to it.

After a comprehensive review, as I say, we recommended amendments to the Mississauga planning and zoning bylaw to maintain municipal control of generating facilities. This proposed amendment would completely remove energy undertakings from municipal regulation. In doing this, the province has seriously limited the ability of municipalities to manage growth in a coordinated and strategic fashion. With all respect, as long as municipalities are responsible in their consideration of these facilities, the province should defer consideration on their location to the local municipality.

Bill 51 introduces a number of changes to the mandated processes that municipalities must follow respecting planning applications. The current mandatory review of official plans every five years is continued. It was hoped that Bill 51 would clarify that the next review start five years after the completion of all outstanding appeals of a newly enacted official plan. Sometimes they go on for years; where an official plan has been appealed to the Ontario Municipal Board, it can take years for all of the outstanding issues to be determined and finalized. If a new official plan must be enacted five years after council approves it, then work on the new official plan must be taking place at the same time or shortly after the appeals of the existing official plan are finished. Reviewing and enacting an official plan is a very expensive and time-consuming process. The process of enactment of a new official plan should only be required five years after a newly enacted official plan becomes law, meaning that the five years start to run after the final appeal to the Ontario Municipal Board has been dealt with.

Added on top of this is the requirement that the zoning bylaw be revised within three years of the adoption of a new official plan. While no one would argue that zoning bylaws must be consistent with current official plan policies, it must be recognized that adopting a new comprehensive zoning bylaw is extremely time-consuming. We're going through that. When such a bylaw is appealed to the Ontario Municipal Board, it can take years before the appeals are complete. Accordingly, there must be a mechanism in the legislation for determining the start and end dates of these appeals in a way that makes sense. Municipalities must be able to rely on the official plan, once it has been approved, for at least a

couple of years before they have to turn their mind to a further revision and update. Without a period of stability, it would be extremely difficult to assess what actually needs to be changed or modified.

I question the need for putting a mandatory requirement in legislation that open houses be held and for including legislated requirements respecting notice. As committee members are aware, section 2 of the Municipal Act states that "Municipalities are created by the province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction...." When the current Municipal Act was enacted in 2001, it contained a number of specific notice requirements. In proposing amendments to the legislation in Bill 130, the Minister of Municipal Affairs and Housing has acknowledged that municipalities can exercise their powers and duties under other legislation, such as the Planning Act, without this detailed level of prescription from the province. In fact, the detailed notice provisions found in the current Municipal Act are to be replaced with only a broad requirement that procedure bylaws provide for public notice of meetings. Bill 51 should likewise be amended to recognize that municipalities are capable of determining how and when to provide notice to the public and when to hold open houses.

I strongly support the move to bring the OMB back to its role as an appeal body on local planning matters and not the main decision-maker. There is a need for a qualified, objective review of municipal decisions in certain situations, and the OMB is the appropriate place for this, not the courts.

Clearly, though, the greatest opportunity for public input and comment is at the hearings that take place in the local municipalities and not through the formalities of an OMB hearing. Many members of the public find the OMB process very confusing and intimidating. The cost of participating blocks participation by residents who can't afford to hire lawyers and other experts. Municipalities are the level of government that are most in touch with the pulse of the local community and the place where residents feel comfortable participating. Bill 51 recognizes this.

When a matter does proceed to the OMB, the proposed section requiring the OMB to "have regard" for the decisions of municipal councils is insufficient to achieve the intended objective of returning the OMB to its original role of a truly appellate body. Under previous versions of the Planning Act, when the OMB was required to have regard for provincial policies, the OMB interpreted this requirement in several ways. There was no consistency. This phrase did not place any compulsion upon the OMB to apply or follow provincial policy.

In recognition of this, the Planning Act has been amended to require municipal councils and the OMB to make decisions that conform with provincial plans and are consistent with provincial policy statements. Stronger language to give similar deference to decisions of municipal councils should be included in Bill 51. Alternatively, Bill 51 should be amended to make it clear that

the standard of review by the OMB of the council decision is one of reasonableness. This will make it clear that the OMB can't simply substitute its own views for those of the municipal council.

Bill 51 deals with a number of other matters related to the Planning Act, one of which is community improvement plans. Traditionally, only lower-tier municipalities in a two-tier jurisdiction have been authorized to implement community improvement plans. This recognizes again that the local municipality is the level of government most in touch with the local community, whether business or residential.

Upper-tier municipalities should not be able to adopt community improvement plans without the consent of the lower-tier municipalities that are impacted. By "impacted," I mean lower-tier municipalities within the defined geographic boundaries of the community improvement plan as well as those upper-tier municipalities that will have to finance such plans through their upper-tier tax levies.

Amendments respecting site plan approvals are also welcome changes. By allowing municipalities a say in matters related to exterior design, municipalities will be able to better regulate and bring together the look and feel of a neighbourhood. This is especially important when dealing with applications for infill and intensification. Giving municipalities the ability to promote certain innovative ideas through sustainable design such as solar panels and green roofs is also welcome. One recommendation in this area, however, is that this amendment be expanded to include accessibility as a matter that a site development plan may deal with.

Mississauga strongly supports the provisions in Bill 51 that require applicants to submit a complete application to the municipality before they can appeal a development to the Ontario Municipal Board. We also support the provisions that limit the ability of the OMB to receive or consider technical reports that appear for the first time at an OMB hearing. After the matter is sent back to the municipality, however, Bill 51 only requires the OMB to consider council's decision if it is made within the prescribed time. This needs to be strengthened so that at the very least the OMB must have regard to council's decision.

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Finally, since sustainable development and support for public transit are identified by the province as matters of provincial interest, Bill 51 should amend the Environmental Assessment Act to facilitate the development of public transit and parks. Although hearings under the Environmental Assessment Act and the Planning Act may be combined, the process is very complex, costly and way too lengthy, and should be reviewed.

Thank you for giving us the opportunity to present Mississauga's long experience in development over the last 35 years to the committee.

The Vice-Chair: Thank you very much. We have two minutes for questions from each party. We'll start with Mr. Prue.

Mr. Prue: Two minutes? I'm going to try two questions. The first one is related to section 23 on energy proposals. You feel that the province should be able to mandate and say, "You're getting a nuclear facility in Mississauga," but that Mississauga should be able to say where it is. Am I getting that correct?

Ms. McCallion: Actually, we believe there's a necessity for having hydro generation plants in the province, and we all have to make our contribution—each municipality. We do not agree that they should be exempt. We disagree with that completely. We have proven—and we have the co-operation of the OPA and the OPG—that we have reviewed our designated industrial sites. They could go on any industrial site. We eliminated that and we tied it down that we will accept energy production plants in Mississauga based on us deciding where they should go, and under certain criteria as well—limitations. So we are very supportive of that.

Mr. Prue: Okay. The second aspect that I want to deal with, because I've only got two minutes—

The Vice-Chair: A quick question.

Mr. Prue: Yes—has to do with the zoning bylaws. The city of Toronto, because it was amalgamated, needs about another seven or eight years to get its zoning bylaws together. I take it that Mississauga also has difficulties with the three years. Could you tell me how long you need to be able to deal with this?

Ms. McCallion: I'm going to ask Ed to respond to that. I have no idea, but it's a very lengthy process.

Mr. Ed Sajecki: I can't give you a precise date, because I think circumstances from municipality to municipality vary. A small municipality would have a very different timeline than a large municipality like Toronto or Mississauga. I can tell you our own experience: We've been at it for about five years and in fact we're hoping to bring in, and I promised the mayor that we will be bringing, the final report to council in September for adoption. So I would say you're somewhere in that period of five to 10 years, but I think it varies with the complexities of municipalities.

Mr. Bob Delaney (Mississauga West): Thank you very much. Welcome, Madam Mayor. It's always good to see you. I think the ministry staff heard very clearly your points on revisions of official plans, but the point I'd like to ask you—you made several references to public participation. Could you tell us how Mississauga handles public participation on issues like this?

Ms. McCallion: Long before the mandated public meeting, our councillors, each and every one of them, hold meetings with the citizens. In fact, I can give you an example of a major development in Port Credit, where the starch lands were developed for residential. I would say that the councillor held at least eight to nine meetings with the public before it even got to council. Even the preliminary report came to council, and then the final report, after the mandated public. So our council is very conscious of public input.

In addition to that, with a controversial development—or with any development—they form focus groups. They'll call a major meeting of the entire area affected.

Then they will ask a focus group to be appointed that will work with the councillor and the staff dealing with it. That's long before it comes to the planning committee, which is council of the whole, for consideration, for the official public meeting.

So we're very proud of our public input process. I think it solves a lot of problems. It has prevented many things going to the OMB, and the developers work with that focus group as well. It's a focus group made up of the developer's representatives; the staff is invited, and the public. That's long before it ever comes to council for any decision.

Ms. MacLeod: It's a pleasure to finally meet you, Ms. McCallion, Your Worship. I've watched you over the years, and I'm finally in the Legislature. I'm very excited. I have so many questions, but I'm going to limit them, following along the lines of my NDP colleague Mr. Prue, to the OMB. In my city of Ottawa, we've had numerous changes, revisions, to our official plan that go through council. Similarly, we have a lot of appeals there, just like Mississauga. I'm just wondering, on average, per year, how many appeals to your official plan do you have and how many times has council brought forward a change or a revision to your official plan?

Ms. McCallion: Ed?

Mr. Sajecki: We've really seen the numbers go down. By and large, we've been working out potential appeals in advance. The mayor pointed out the public participation process that we do go through, and that does involve the developers. We've worked on a lot of them. In terms of numbers, we probably had maybe 10 last year—major ones. I'm not talking about committee of adjustment; that's different.

Ms. Mary Ellen Bench: Yes, that's probably correct. But I think one of the things we were talking about was in terms of putting in place a new official plan. We just put in place Mississauga's plan about four years ago. We had a number of appeals. We're just finalizing those appeals now. So four years later, we're finalizing the appeals.

We're also working on our new official plan to meet the next deadline. We're just finishing one and we're up against the deadline for the next one going forward.

Ms. MacLeod: I would say my community is going through the same process.

Yesterday it was also suggested by one of the deputies that we should limit changes to an official plan by municipal councils to six a year. I remember working at Ottawa city hall and there were about six a meeting. So I was just curious to see how many you folks would have.

The Vice-Chair: Thank you very much. That brings us to an end of this deputation. Thank you, Your Worship, and to your staff for your presentation. I wish you all a good day.

ONTARIO HOME BUILDERS' ASSOCIATION

The Vice-Chair: Next we have the Ontario Home Builders' Association. Welcome. Make yourself com-

fortable. As with the other presentations, 20 minutes. Any time remaining in that 20 minutes after your presentation I'll divide between the three parties. Please, for Hansard, state your names if you're both going to speak.

Mr. Victor Fiume: Thank you, Mr. Chair and members of the committee. Good morning. My name is Victor Fiume and I am the president of the Ontario Home Builders' Association. I have also served as president of the Durham Region Home Builders' Association. I've been involved in the residential construction industry for two decades. I'm currently general manager of the Durham Group.

Joining me is Brian Johnston. Brian is the first vice-president of the Ontario Home Builders' Association and he is the president of Monarch Corp. He is also a member of the Greater Toronto Home Builders' Association, the Hamilton-Halton Home Builders' Association, the Ottawa-Carleton Home Builders' Association and the Waterloo Region Home Builders' Association, as well as serving on the board of directors at Tarion Warranty Corp. Monarch has built thousands of new homes and condos across the province over the past couple of decades. We are both volunteer members in the association, and we appreciate the opportunity to speak with you today.

I'd like to ask Brian to tell you a little bit about the OHBA.

Mr. Brian Johnston: Thanks, Victor.

The Ontario Home Builders' Association is the voice of the residential construction industry and includes 4,000 member companies organized into 31 local associations across the province. Our industry represents 5.6% of the provincial GDP and contributed approximately \$34 billion to the province's economy last year.

OHBA would appreciate your consideration with respect to a number of concerns with the proposed Planning and Conservation Land Statute Law Amendment Act. Over the past couple of years, the development industry has been drastically overhauled by this government. The greenbelt, Places to Grow, building code changes, WSIB reforms, the proposed Clean Water Act and many more reforms have changed the way we in the development industry do business.

We have been consistent in our position that we are in favour, in principle, of many of the legislative changes. We have been equally vocal that while these changes are needed in order to manage and accommodate future growth, it is imperative that we offer Ontarians a broad choice in housing forms and allow them to make a choice based upon their individual lifestyles.

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OHBA has reached a consensus with the government on the need to better manage our growth and preserve what is important to all Ontarians—clean water, clean air and preserved green spaces—while at the same time working to accommodate the anticipated growth over the next 25 years.

The question arises: Have we, with Bill 51, assured ourselves that in fact everyone will respect the intent of

the PPS and all other recent government initiatives? Will there be co-operation from all areas and ministries of the provincial government with respect to policy? Where we agreed that there were adequate assurances built into the legislation, we have accepted the conclusion. However, where we felt the wording or the basic premise of a section failed to meet these tests, we have suggested a further review or offered ideas which we feel are more appropriate. Our intent is to ensure that Bill 51 fulfills its goals.

Mr. Fiume: Bill 51 proposes new, often time-consuming requirements for developers, a number of new powers for municipalities and a revised role for the OMB. OHBA is of the opinion that what may have been the intent of Bill 51—to reduce municipal and OMB workload—is unlikely to materialize with the proposed changes.

Municipal councils make proper planning decisions on the majority of applications that appear before them. However, in some situations, applicants exercise their right of appeal to the OMB to ensure that their concerns are heard in a fair and impartial environment. The OMB must retain the right to hold independent, non-partisan hearings on a de novo basis and must continue to hear third-party evidence to ensure that a fair and impartial decision is made.

Planners, architects, engineers and economists are all part of a valuable brain trust that must be maintained as an integral component of the planning process via the OMB. Hearings de novo allow for a debate and comprehensive review of the planning merits of a case that cannot occur at a municipal council meeting. Therefore, OHBA recommends that the proposal to have no new evidence presented at the OMB be eliminated and that full hearings de novo be maintained.

The complete application provision in Bill 51 is vague and may allow municipalities to refuse to accept applications for rezoning, official plan amendments, and plans of subdivision and consent unless the application is deemed complete according to the municipality. OHBA is concerned that if acceptable terms of reference are not established, costs and time will inevitably increase.

A mandatory pre-submission consultation would help smooth out any misunderstanding and assist to streamline the approval process. If a municipality does not ask for a study at the pre-submission consultation, they should lose the ability to require it further along in the process. If the planning application is appealed to the OMB, then the applicant should be entitled to submit into evidence any additional studies which were not originally required by the local planning department.

OHBA recommends that the complete application requirements in Bill 51 be revisited to include a mandatory pre-submission consultation to outline the terms of reference for what is required in a complete application. OHBA further recommends that timelines be set for a municipality to deem that an application is either complete or incomplete. Lastly, Bill 51 must be amended to stipulate that only relevant information to support the application be required.

While public participation is an important part of the planning process, OHBA is concerned that an open house held on all applications will create delays in the planning process and result in additional expenses for municipal planning departments. Planning policies are a reflection of the public interest, yet it is the applicant who often stands to defend public policy through the implementation of their development. NIMBYism will undermine public policy at the expense of the applicant. Therefore, we recommend public open houses for OP amendment applications only.

OHBA does not support any recommendation for a local appeal body where the OMB is not granted the authority to hear an appeal of its decision. Exempting planning decisions from the review of the OMB or creating a local appeal body for certain types of applications would not serve the provincial interest.

Mr. Johnston: OHBA is in support of good urban design and architecture. However, our members have a number of reservations with respect to regulations and review panels that may politicize—I would say more than “may”; will probably politicize—and exercise control over architecture, urban design and built form. If given the opportunity, approval authorities will mandate the highest standard of materials, design and building features, which come at a high cost premium. Urban design staff are often not equipped to the point where they fully understand the cost implications of certain design and material choices. OHBA cautions that regulating urban design will create uncertainty in the planning process and not necessarily result in a better product.

OHBA would consider support for properly constituted, voluntary design review panels, provided they are undertaken by an advisory panel whose membership is composed of objective design professionals as well as development industry representation. If established, design review panels must operate independently from local politicians.

OHBA recommends that proposed changes to section 41 of the Planning Act dealing with site planning control and urban design be revised to limit municipal power to control architecture and design. These provisions are at the expense of consumer choice and are counter-productive to provincial goals for affordable housing.

Mr. Fiume: OHBA is concerned that imposing conditions through zoning has the potential to make some projects economically unfeasible. Zoning conditions could significantly increase the cost of many projects, which would in turn impact housing affordability. OHBA recommends that the province amend Bill 51 to require municipalities to provide applicants with an offset credit on their parkland dedications or cash in lieu of parkland conveyance and/or development charges arising from proposed land dedications or zoning conditions.

The proposed legislation includes a provision that would eliminate a proponent’s right of appeal to the OMB if a municipality refuses its application for conversion of employment land unless it is part of the five-year review of an official plan.

The definition of “area of employment” as currently written in Bill 51 indirectly includes mixed use, which effectively includes a residential component and will severely affect, if not paralyze, attempts at increased intensification. OHBA recommends that the province review and amend its current definition of “area of employment” in Bill 51 so that areas of mixed use cannot be included.

As with any legislation which seeks to address well-entrenched ideals, the key is how we manage transition. OHBA recommends the need for clear transition regulations for applications currently in process. The province should ensure that applications be assessed against the plans and policies in force on the date of the application.

OHBA is in support of provincial efforts to ensure that municipal official plans and zoning bylaws are updated in a timely fashion and brought into conformity with the provincial growth plans and the provincial policy statement. These steps are crucial to achieve provincial intensification and sustainable development objectives. However, the municipal review of OPs and zoning should not be at the expense of future development applications. The province should assist municipalities financially if required. OHBA also applauds the government in its efforts to improve the quality of OMB decisions by enhancing the experience, qualifications, compensation and training of board members.

Lastly, the province must provide greater clarity with this bill and a number of other initiatives, such as Places to Grow and the Clean Water Act, as to who has the final authority or which policies will overrule others, to ensure a timely decision for development applications. The province must ensure that the economic engine of Ontario can continue to provide jobs while adhering to provincial policy.

In conclusion, OHBA supports a balanced land use planning system to ensure a clean, green, economically competitive province. However, from the industry’s perspective, Bill 51, if enacted as currently drafted, has the potential to unnecessarily delay projects and obstruct intensification and urban renewal, thus hindering a number of the province’s stated key objectives. Bill 51 will cause unnecessary delays and increase costs to an already lengthy and overregulated process.

In closing, I would like to reiterate that, as the engine that drives the provincial economy, the residential construction industry pours billions of dollars into municipal, provincial and federal coffers. It is in the best interest of all Ontarians that the provincial government work with us to ensure that the new housing and renovation industries continue to thrive.

Mr. Chair, members of the committee, I would like to thank you for your attention and interest in our presentation, and we look forward to hearing any comments or questions you may have.

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The Vice-Chair: Thank you very much. We have about two and a half minutes for each party. We’ll start with Mr. Delaney.

Mr. Delaney: Thank you very much. An interesting brief. If I can summarize the message I heard, it's that OHBA seems to feel that developers know more about how a community ought to develop than the people who are going to live there for decades after the builder is gone and that the developers' views ought to supersede those of the representatives that communities elect to shape their future. So my question to you is, why do you feel that cities and towns in Ontario are not capable of managing development within their own borders, and why should developers make binding decisions on the pace and the mix of urban development?

Mr. Fiume: In fact, Mr. Delaney, quite the opposite is true. Developers themselves do not purport to be experts. Developers use the expertise of planners and consultants, and environmental people as well. We don't purport to have all the answers. I think what you'll find is that we very much act like municipalities and we bring in expertise to help the development process along, the development application along.

In regard to public participation, we are of the mind that public participation really needs to take place at the appropriate time, the appropriate time being the review of the official plan. Currently, the concerns we have are that many of the zoning designations in municipalities do not comply with their official plan. Ideally, what we need to do, and what Bill 51 does do, is ensure that these zonings will be brought into compliance with the official plans. But the discussion needs to happen at the official plan stage, with public input. That's why the official plan review was created. I think we are very, very happy to receive all kinds of input at that time. To take land that was designated in the official plan as high-density, or whatever the case may be, and then argue against it six years, seven years, eight years after it's been enshrined in the official plan we think is counterproductive. We welcome the discussions, but the discussions need to happen at the appropriate time.

The Vice-Chair: Ms. MacLeod.

Ms. MacLeod: Thank you both for your presentation today. In fact, I did not get from your presentation what my colleague across the floor did. In my own community, a very high-growth community, where Monarch Homes probably has built thousands of homes in the last three years, they've been great public participators with our city council as well as with our communities. I find in some parts of this bill that there's a penalty for that. I look at the retroactivity clause and I think we're punishing, as you say, good contributors to our economy, specifically in Toronto, and I guess in Ottawa and probably Mississauga as well.

I'd like to know more about the retroactivity clause, what exactly you think that will do to your industry.

Mr. Fiume: I guess ultimately what we are always looking for in this industry is certainty. It doesn't help our cause or anybody's cause when we put in an application in compliance with the current legislation and then have a new piece of legislation coming along a number of years later and affecting the decisions and the work

that have gone into that application. The transition period is always the most important period. I think what you need to do is let the process that was in place at the time continue, while moving forward. We are certainly very happy to move forward with the new regulations that will be out there. The fact of the matter remains that these applications were brought in in compliance with existing legislation. What we need to do is move forward with those applications, get them improved where it is appropriate, and then new applications should be in compliance with the current legislation and provincial policy statements.

Ms. MacLeod: Would I be able to split my time? I think my colleague may want to—

The Vice-Chair: You've got about another minute.

Ms. MacLeod: Would you like to add anything, Mr. Hardeman?

Mr. Ernie Hardeman (Oxford): I would like to follow up on that just very quickly. Obviously, there was a concern on behalf of municipalities, and the government seems to have the same concern, that some applications languish for years and years, and we wouldn't want, under totally different legislation, to have things approved based on what was approved 10 years ago; the application has been there that long. Do you have any suggestions of how we could make that happen without retroactivity, whether there could be a timeline or something put on applications because of the change in times and the change in the need of our environment?

Mr. Fiume: Thank you, Mr. Hardeman.

The Vice-Chair: A quick answer.

Mr. Fiume: In Places to Grow, the government actually had a very fair transition policy, we thought. I'm not sure we have a specific answer, but certainly we would be happy to sit down with the province and figure out what would be a fair transition period. I don't think you can go back 20 years and automatically grandfather things in. I think where these projects are a significant concern to municipalities, they need to be addressed.

The Vice-Chair: Mr. Prue?

Mr. Prue: Your second recommendation troubles me somewhat, because you are recommending that the province eliminate the provision stating that the OMB "shall have regard to" municipal council decisions. The previous deputant, the mayor of Mississauga, is recommending that that isn't even strong enough. She gives similar deference to decisions of municipal councils as they deal with the province, where it says "must conform with." Why are you trying to eliminate this provision that the municipal councils be listened to?

Mr. Fiume: In fact, that's completely the opposite to what we have.

Mr. Prue: That's what you say.

Mr. Fiume: What we are saying is that, as it relates to complete applications and as it relates to any decisions, if down the road new evidence comes about and a motion is made to the OMB, councils would be given the opportunity to re-evaluate the application as it relates to any new information that has come along.

Our belief is that these decisions are best made by local councils through their planning department. In fact, the OMB is a last resort for us as developers, but a necessary one at times. I would think that none of us here in this association is saying that municipalities shouldn't have the right to make the decisions. The municipalities have the right to make the decisions and we hope they use that right prudently. But if they do not, and if new information does come up and we make a motion to the OMB, they should be allowed to re-examine any new information. We want the decision to be made at the local level.

Mr. Prue: All right, but I think you'd better reword number 2.

Number 9: You recommend "that the province review and amend its current definition of 'areas of employment' in Bill 51. Areas of mixed use should not be included in the 'areas of employment' definition."

In many municipalities, particularly those with infill, employment is starting to creep in and is in fact becoming part of neighbourhoods, live/work situations and things like that. Why do you want mixed use not to be included in "areas of employment"?

Mr. Fiume: It is as it relates to the review. So if you have a brownfield site with potential mixed use developments in there, in effect the legislation says it cannot be rezoned to any other use for other than employment lands unless there is a comprehensive five-year review, which would be the official plan review. Our suggestion is that in terms of mixed use, where you still will have employment opportunities, the council be allowed to make that decision at the time rather than waiting five years for a complete official plan review of all the employment land situations.

The Vice-Chair: Thank you very much. That brings us to an end of your deputation. Thank you for attending, and have a good day.

DUCKS UNLIMITED CANADA

The Vice-Chair: Next we have Ducks Unlimited. Please make yourself comfortable. You have water there. As with the other deputations, you have 20 minutes for the presentation. Should time remain after your presentation, we'll divide it between the three parties. At the outset, please state your name for Hansard purposes. Welcome.

Mr. Kevin Rich: Good morning. My name is Kevin Rich and I am the head of municipal extension programs for Ducks Unlimited Canada in Ontario. Thank you for the opportunity to address the committee regarding the proposed Bill 51, the Planning and Conservation Land Statute Law Amendment Act. From the outset, we would like to commend the government for its commitment to meaningful reform of the land use planning system and the Ontario Municipal Board, as evidenced by Bill 51 and other related pieces of legislation and initiatives.

Bill 51, in concert with the 2005 provincial policy statement, the Greenbelt Act, the Places to Grow Act and

the Strong Communities Act and their related plans will help to ensure that Ontario's natural areas are sustained well into the future, providing a multitude of benefits to the citizens of Ontario.

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Members of the committee may well ask why our company would be interested in making a presentation on matters governed by Bill 51. The answer is quite simple: Our business is the conservation and restoration of wetlands and associated habitats for North America's waterfowl. These habitats in turn benefit other wildlife and people. An effective and efficient land use planning system with changes proposed in Bill 51 represents one of the key ways that governments and individuals can conserve wetlands. Conversely, inappropriate development of green space, aided and abetted by an ineffective land use planning system, represents a major threat to wetlands, both in terms of wetland area and wetland health.

Ducks Unlimited Canada is a charitable Canadian company operating across Canada and within Ontario. In Ontario alone, we've conserved over 900,000 acres of wetland habitat. Working with many partners, including over 1,700 landowners, we are also very fortunate to have the generous support and efforts of 25,000 members and 1,600 volunteers across the province. We've accumulated over 60 years of experience in the conservation of wetlands and associated habitats for waterfowl. Our conservation programs are guided by the objectives of the North American waterfowl management plan, a highly successful multi-stakeholder initiative, including senior governments in Canada and the US, as well as other non-government organizations.

The majority of our work takes place in rural Ontario. The Ontario component of our conservation vision calls for us to protect all existing wetland habitats and restore two to three times the amount of existing wetland area in southern Ontario. This is a significant undertaking, which we contemplate spending in the order of \$100 million on over the next decade with our conservation partners in order to accomplish.

It's abundantly clear that wetlands in Ontario continue to be at risk due to land development pressures, as well as other factors. Over 60% of southern Ontario's wetlands have been lost, an area roughly twice the size of Algonquin Park. This number increases to a high of 90% in the province's extreme southwest. With this loss comes the loss of substantial societal benefits often unaccounted for in land use planning decisions. While many people understand the role of wetlands as critical wildlife habitat and valuable recreation areas, far fewer people understand their role in the protection of our supply of drinking water and water for other uses.

Putting a price tag on the whole range of those societal benefits is difficult to do, but has been attempted. One recent estimate from a study found that conservation of natural areas in an agricultural landscape in southern Ontario created a net value of between \$80 and \$340 per acre per year. To put this in perspective, for the regional municipality of Durham alone that translates into an

estimated economic value, for wetland areas alone, ranging from \$4 million to \$18 million per year.

One of the primary ways we plan to conserve existing wetlands is to assist municipalities, conservation authorities and other local organizations to develop and implement sound, sustainable and workable land use policies for conservation of natural areas. We do this largely by providing data on wetland benefits and values, wetland mapping and other expertise to municipalities in targeted areas of the province that they can use to develop appropriate policies to guide their own land use planning. As I mentioned earlier, inappropriate development of green space due to inconsistent land use planning represents a significant threat to the conservation of wetlands and the benefits they provide to all residents of Ontario. Wetlands and adjacent upland habitats in areas close to urban centres and urbanizing centres are particularly at risk. Even more so, wetland areas which lie outside the greenbelt plan area and lack the protection afforded by the greenbelt plan and other provincial plans, areas like south Simcoe county, for example, face a higher risk of loss even if the proposed Bill 51 is passed by your government.

We support the overall intent and direction of Bill 51. In general, we commend the government for its attempt to encourage more compact development and intensification, which should lead to reduced urban sprawl, improved energy efficiency and better protection of all green space. In particular, we support several specific aspects of Bill 51, including the provision for municipal councils to have more time to review development applications and the provision for the public to have greater opportunity to review and comment on official plans. These are both positive changes. It's worth emphasizing that while the data and information on the benefits of land development are readily available to municipalities, the data and information on the benefits of land conservation, and wetland conservation in particular, are hard to access and are often very complex in nature, particularly as they relate to economic benefits. Therefore, the more time a municipality has to gather and review such information, the greater chance they'll be able to make well-informed decisions on land use matters.

We support the ability for municipalities to prescribe what specific information is required to be included in development applications, which should improve the transparency and the efficiency of the development review process.

Regarding proposed changes to the role of the Ontario Municipal Board, DU strongly supports a shift for the Ontario Municipal Board from a decision-making body to a true appeal body with limited powers to overturn decisions made by local councils. New local appeal boards should aid in ensuring that decisions on local development matters are made by local councils and authorities and not by the OMB. We also support the requirement that municipal council and OMB decisions be consistent with current provincial policies and plans in place at the time those decisions were rendered.

We support amendments to the Conservation Land Act that enable the further use of conservation easements for the purposes of conservation and protection of water quality and quantity, as well as watershed management. We support the provision for the use of a development permit system across the province which has the potential, among other things, to protect sensitive shoreline habitats, including wetlands, while at the same time streamlining the approval process.

We would also like to take this opportunity to suggest a number of enhancements to Bill 51 and related provincial policy. Specifically, Bill 51 restricts who is entitled to appeal a council planning decision by excluding any person who is not a public body and did not make an oral or written submission before the council decision was made. In so doing, Bill 51 will unduly limit public participation in the appeal process and favour participation by the applicant and public bodies. Ducks Unlimited opposes this section of Bill 51 and suggests that this section be removed.

Bill 51 lacks any provision for intervenor funding for community groups participating in OMB appeals. Lack of such funding seriously restricts the ability of underfunded groups, many of whom advocate for the broader public interest, to participate in OMB hearings. Ducks Unlimited recommends that the province develop a framework whereby intervening funding is provided.

To effectively implement the 2005 provincial policy statement, in particular sections dealing with water—section 2.2—approval authorities need clear guidelines from the province regarding the identification and protection of so-called “sensitive” surface and groundwater features. It is our understanding that no such provincial guidelines are yet available, and we strongly urge the government to work with municipalities and other stakeholders to develop these guidelines.

Effective implementation of the 2005 provincial policy statement's section 2.1, dealing with natural heritage, requires a consistent approach across the province to identification of natural heritage systems, often referred to as a system of connected cores and corridors of green space. It seems self-evident that such a system can't be protected from development unless it is identified and mapped, but in many parts of southern Ontario that mapping simply doesn't exist, largely due to a lack of municipal resources. Ducks Unlimited supports current efforts by the province to identify a provincial-scale natural heritage system via the natural spaces program but has concerns regarding scale and accuracy issues for the use of this data in local land use planning. In the absence of such provincial-scale mapping, the province should develop clear, defensible standards so that local municipalities can identify, map and conserve their own natural heritage systems.

Development of a natural heritage system and appropriate land use policies for conservation of that system in areas just outside the greenbelt plan will be particularly important in order to conserve green space in those areas of the province which are particularly threatened by development pressures, as noted previously.

Lastly, performance monitoring is currently not required under the Planning Act nor under the proposed Bill 51 for land use planning, although some municipalities have adopted this strategy to improve the effectiveness of their land use planning systems. To augment the monitoring undertaken by some municipalities, Ducks Unlimited encourages the province to undertake provincial-scale performance monitoring in support of the provincial policy statement in matters of provincial interest, including significant natural areas.

In summary, Ducks Unlimited strongly supports the government's proposed Bill 51, with certain exceptions and suggestions for improvements, as noted above. Together with other related pieces of provincial legislation in plans recently passed and proposed, we expect that Bill 51 will improve the accountability, efficiency and effectiveness of the land use planning system in Ontario and should result in the enhanced protection of valuable natural areas and resources.

Thank you for your time today. I look forward to any questions or comments that the committee may have.

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The Vice-Chair: Thank you. We have about two and a half minutes for each party. Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. I have to say I'm a little surprised, because there are two areas that I think, in my mind at least, are going to be quite negative to the interest of Ducks Unlimited in my community, and one is the right to appeal. You mentioned that that would be one of the improvements the government could make, which is to not inhibit the ability of people to appeal a council decision. But the way the legislation is written now, Ducks Unlimited would have to get involved with every application in my community, in the city of Woodstock, to make sure that there were no wetlands involved, because if they don't make a presentation to the application, not only can't they appeal, but even if it is appealed, they can't be heard at the OMB because they can't bring in new evidence. I would think that Ducks Unlimited would have grave concerns with that position, that in fact the public is being eliminated from the process, not helped with the process in this bill. There will be a lot of original applications that the public doesn't make presentations to in its first visit to council because they didn't know that the Brick wetlands were involved. It's one in my area that Ducks Unlimited was very involved with. I would think that they'd want to keep it that way, but they weren't at the first council meeting. So I think that would be very important.

The other part—and maybe you could help me with this; I'm not sure—is where you say that the Ontario Municipal Board function has dramatically changed, other than they can't allow you to put in new evidence, but they still make the decision based on the evidence that was presented at council. So it's not just a review of council; they "shall have regard to" council decision, not "be consistent with." Could you maybe help me with what you think is so much better about the OMB structure as it relates to Ducks Unlimited?

Mr. Rich: Okay. I'll start with the second part of that question. It relates to the comments we made regarding the Ontario Municipal Board. We think the largest improvement there relates to the restrictions proposed in Bill 51 that would prevent the Ontario Municipal Board from overriding municipal decisions on expanding settlement areas or development of new settlement areas. That was the key area of interest for us as a way of continuing urban development and urban sprawl.

With respect to the first comment on the restrictions of who may appeal decisions made by council, we were of the opinion that restricting those rights to individuals who participate in the initial council hearings unduly limits participation by other people who were simply not available or simply did not get notice nor were aware of the decision at the time or the hearing at the time.

The Vice-Chair: I'll have to cut it there. Mr. Prue?

Mr. Prue: You did not deal with this, but it seems to me a natural that maybe should have been dealt with, and that's section 23, which no longer gives the municipalities any rights over energy projects. We've had a number of groups come forward with large-scale wind-mill projects that they are opposing. Part of the opposition has to do with their being dangerous or in the flight paths of birds. Are you concerned at all that municipalities are out of the energy business and that large windmills can be sited literally anywhere, usually along the lakes?

Mr. Rich: Our research division is currently looking at the impacts of wind farm developments on migratory birds, including waterfowl, so I'll reserve comment on that from the science standpoint. I think I'd better just leave it at that.

Mr. Prue: Okay. You've said that the municipalities should be involved in all other aspects of wetlands. Should they be involved in any aspect where wetlands or potential wetlands might be impacted by a nuclear plant, wind farms, gas-fired generation or any other such developments?

Mr. Rich: I think in general municipalities should have the right to guide land use planning and conserve all natural areas, including wetlands that may be impacted by energy projects.

Mr. Prue: Thank you.

The Vice-Chair: Mr. Sergio.

Mr. Sergio: I don't have any particular questions. I just want to thank you for your interest in Bill 51 and a good presentation.

Mr. Rich: Thank you very much.

The Vice-Chair: Thank you for your deputation today, and have a good afternoon.

This committee stands recessed until 1:30 p.m.

The committee recessed from 1206 to 1331.

CONCERNED CITIZENS OF AMHERST ISLAND

The Vice-Chair: Good afternoon. I would like to call this afternoon session to order. First on the agenda we have the Concerned Citizens of Amherst Island. I would

like to remind you that you have 20 minutes for your presentation. Any time remaining that you haven't used in that 20 minutes we will divide between the three parties. I would ask also, when you first begin speaking, if you could clearly state your name for Hansard. Welcome.

Mr. Hans Krauklis: My name is Hans Krauklis. To my left is Urszula Stief. Sitting farther away is Erika Krauklis. She did all the driving.

Members of the committee and ladies and gentlemen, thank you for giving us the opportunity to present to you our concerns regarding Bill 51. We represent a group of residents on Amherst Island near Kingston, Ontario. Before starting the slide presentation, I would like to mention that the attachment to the letter that we sent you, which was dated August 1, in addition to providing background material also lists quite a few references. These papers which were listed are available on CD-ROM for further information.

In the letter, we also made reference to a nine-minute video that we prepared and which shows a part of the Melancthon wind farm in actual operation. The DVD is available for your viewing, if you like. I have it right here.

The first part of the slide presentation sets out our concern with Bill 51, specifically clauses 23 and 24. We then propose language for clause 24 that would allow us to continue to address our issues regarding commercial wind farms under the provisions of the Planning Act. The second and third parts of our presentation are intended to provide a more balanced perspective on the pros and cons of wind power than we usually get from the proponents of commercial wind farms and others.

Please bear with me as I go through the specifics of the two clauses and the modifications that we are proposing; it's a bit technical. Clause 23 amends the Planning Act with respect to potentially all undertakings relating to energy, at least that is how we understand it. If approved under or exempted from the Environmental Assessment Act, and fitting the definition of "undertaking" or "class of undertakings" that relates to energy under clause 24, which seeks to modify section 70 of the Planning Act, then such undertakings would no longer be subject to the provisions of the Planning Act but rather regulation by order in council.

We consider that the language of Bill 51, clauses 23 and 24, would give the provincial cabinet additional powers that are quite disproportionate to the perceived potential problem they are meant to address.

We list some of the adverse effects of clause 23 of Bill 51. It inappropriately prioritizes energy undertakings over other legitimate local and provincial issues; we could quote certain sections from the 2005 provincial policy statement to that effect if you wanted us to. It also constitutes an unfair impairment of local community rights, and we'll get into that later as well. The environmental assessment process is flawed, and Ms. Stief will have some examples of that a bit later on.

I think the central issue is this: a trade-off between expediency and the rights of citizens to due process. To me, that is the crux of the matter.

However, we do realize that the government of Ontario may have to expedite the construction of critically needed generating capacity to ensure energy security for Ontarians. We are prepared to accept a trade-off, but it should be spelled out clearly in Bill 51. We therefore propose inclusion of language in clause 24 that would limit the ability of Queen's Park to override the Planning Act only for essential undertakings relating to dispatchable non-intermittent energy, or wording to that effect.

In the next slide, we are offering the specific language, namely, "(h) for the purposes of section 62.0.1, prescribing an undertaking or class of [essential] undertakings that relates to [dispatchable non-intermittent] energy."

We ask only that Bill 51 should continue to respect the provisions of the current Planning Act, at least with respect to utility-scale wind power developments.

You may ask what some of these terms mean. In fact, I myself didn't know what "dispatchable" meant until a week ago.

"Essential": Making a significant contribution in narrowing the developing demand-supply gap for energy. The threshold might be 1% or 2% of the effective generating capacity in Ontario.

"Dispatchable": Here I will quote the Ontario Power Authority. They say, "A dispatchable resource, such as a natural gas-fired generator, can increase energy production when called on to meet increased demand. Power from wind, in contrast, depends on the force of the wind. For reliable supply, dispatchable resources are needed to complement wind generation." You have the quotation on the board.

"Non-intermittent" just amplifies the statement, because what we need is effective generation capacity that is controllable and is more or less quickly attuned to changes in demand. Examples are hydro, nuclear, fossil-fuel-based generation and cogeneration that provide base loading; as well, hydro and open-cycle gas turbine generation that can respond quickly when the wind doesn't blow. Renewable energy like biogas or geothermal could also be included. As we all know, the wind doesn't blow all the time and it's very variable, so you always need backup and standby generation capability.

Now I will turn it over to my colleague.

Ms. Urszula Stief: Now I'll discuss the local benefits and costs. The benefits will be: payments to landowners, approximately 1% of the project revenue; and payment to the municipality, approximately 1% of the project revenue. A quick calculation shows us a typical utility-scale wind power plant or wind farm costs approximately \$400 million for 200 megawatts of installed capacity, or 100 wind turbines of two megawatts each. Each wind turbine is expected to produce at 30% effective capacity or 600 kilowatt hours for each of the 8,740 hours a year.

1340

The wind farm developer will have a 20-year contract with Ontario Power Authority for all the electricity pro-

duced. While the individual contracts with the OPA are commercially confidential, the average price agreed is 8.64 cents per kilowatt hour. Therefore, we can expect each of those wind turbines to generate approximately \$450,000 a year in gross revenue. A typical annual payment for a turbine of this size to landowners appears to be approximately \$5,000—ditto for local taxes.

Now, let's consider the statement by the Ontario Wind Power Task Force in its 2002 report that, on the range of moderate wind speeds found in parts of southern Ontario, commercial wind farms are profitable, but only with tax and market-based incentives. OPA pays 8.64 cents per kilowatt hour for wind-generated power, 3.3 cents per kilowatt hour for hydro power and about 5 cents per kilowatt hour for nuclear power. In other words, at least 40% of the wind power developer's revenue from OPA is subsidized by Ontarians as either taxpayers or consumers.

Now about the costs: upheaval during the construction phase; communal stress, health, safety, annoyance and environmental problems during the prospective 20-year operation. We will look specifically at wind turbine noise and setback requirements. I want to emphasize that the company promoting the Leader project, to which I will be referring, Enbridge, appears to have satisfied all provincially and federally set requirements. Our concern is not with the company, which is not, at this date, involved in the Amherst Island project, but rather with regulations made by the government of Ontario. The environment screening documents I'm quoting from are public documents and have been recently published. They apparently reflect the current provincial environmental standards, and the provincial standards apparently do not require testing for low-frequency sounds and vibrations below 63 hertz. Therefore, setback requirements between dwellings and wind turbines can be as low as 350 metres.

The next slide will show noise map of the Leader wind power project. It is a computer simulation of wind turbine noise levels. Many dwellings are virtually surrounded by the 121 projected wind turbines and as close as 350 metres to them. Once the project is in operation, actual noise levels might differ from the values of the computer simulation. I would not like to live in this kind of a noisy valley. Thank you.

Mr. Krauklis: I don't know if you can hear me.

The Vice-Chair: No, it will be impossible to record. You will have to sit at the microphone, please.

Mr. Krauklis: That's fine; thank you. I just want to say that if you look at this map, it shows this Leader project near Lake Huron. It's about 12 by 12 kilometres in area. The dark spots are the wind turbines, mounted on towers about 100 metres high. The lighter colours are the noise values, if you wish. On the side it shows the loudness in terms of decibels. It all meets provincial standards, but these are computer simulations, and the actual results may be quite different when you live there. I, for one, wouldn't want to live there.

There are many people in that area, and this is only a small selection of all the comments that we have in the

attachment to the letter. A lot of people are extremely upset over there. Just to quote a few, this is a cluster which I selected. They're in the same sequence; I didn't cherry-pick at all. They say: "We, the people that live in this area, don't have any say. It's a done deal." "It will turn a rural area into a commercial venture. There is no regard for the people who live here." "I support green energy, but I believe these turbines do not belong in the neighbourhoods we live in." Finally, "More barren, appropriate sites should be chosen. We have no rights. It's an invasion." These are strong comments.

Before we discuss the local benefits, let's look at the Ontario-wide benefits and costs.

The benefits: Yes, there's a modest addition to effective generating capacity; it's quite small. There are some fuel cost savings. You can substitute wind power for natural gas, and you can stretch out hydro power if you have a dam. If you don't use the water today, you use it tomorrow. And of course, there's some industrial and construction activity.

The costs are: high capital costs, and we'll get into that; tax and market-based incentives, which were discussed before, which means subsidies borne by the Ontario taxpayers and consumers; and some life cycle environmental loading. That, perhaps, may be surprising to the advocates of green power, because when you consider the life cycle of wind power, it turns out that the greenhouse gas emission levels are about as high per kilowatt hour produced as when you build a hydro dam or a nuclear power station. Obviously, if you're burning fossil fuels, the greenhouse gas emissions will be higher, but it is by no means a clean industry as such.

Wind power in Ontario actually is quite plentiful. It's just in the wrong place. The OPA tells us that 95% of that potential is located in the Hudson Bay lowlands, far from the existing high-voltage grid. The wind power that's available down here coincides only 10% of the time with peak load demand in the summer and 20% in the winter. It's a marginal kind of thing as far as we're concerned.

This is the wind map of Ontario, which I cut out of the Canadian Wind Atlas. If you take the Great Lakes areas, you will see that if you could site a wind power plant in the middle of Lake Superior it would be quite effective; otherwise, it's more marginal. The inset at the lower left side is taken from the Ontario Wind Power Task Force report. They classify the wind speeds. Low wind, below seven metres per second, which translates into about 30 kilometres an hour, is not commercially viable. Then there's a band between seven and 8.8 metres per second, which is commercially viable but only with tax and market incentives; in other words, subsidies. If the wind is of higher force and blows more steadily, then it may well be comparative with all electricity generation sources. We will not argue that part at all.

How much time do we have left?

1350

The Vice-Chair: Two minutes.

Mr. Krauklis: Good. Greenhouse gas emissions: While the operation of wind turbines contributes little, if

any, greenhouse gases, the life cycle of industrial wind parks results in greenhouse gas emissions per megawatt of installed capacity as high as those of hydro and nuclear power. That is mainly due to the production and construction of materials which are used for these projects. We can add transportation and everything else.

Again, to quote the OPA, if you look at the brown part, that's the greenhouse gas emissions per kilowatt hour of the various modes. Wind is just about in the middle of the chart here. You can see that.

I may as well skip some of these things and just say that individual utility-scale wind power projects, usually in the order of 200 megawatts installed but only 62 megawatts effective generating capacity, can add only 0.2% to Ontario's supply and much less to peak capacity. Hence we contend that Queen's Park should continue to leave the approval process for such projects under the Planning Act. Thank you very much.

The Vice-Chair: Thank you. We have only about 30 seconds remaining. I want to thank you for coming in and making your presentation this afternoon. We do have your total submission here, the two parts of it. I would like to thank you and wish you a good afternoon.

Mr. Krauklis: Thank you very much. I would like to leave this video here in case anyone is interested in seeing how such a plant operates.

The Vice-Chair: Thank you.

ESCARPMENT BIOSPHERE CONSERVANCY

The Vice-Chair: Next we'll have the Escarpment Biosphere Conservancy.

Mr. Bob Barnett: Great. Thank you, Mr. Chair and members.

The Vice-Chair: Just one moment. I just want to remind you, 20 minutes.

Mr. Barnett: It'll be less than that.

The Vice-Chair: What time remains will be split between the three parties. If you would please introduce yourself, your names, for Hansard.

Mr. Barnett: I'm Bob Barnett. I'm the executive director of the Escarpment Biosphere Conservancy.

Just to preface my remarks, I'm going to talk mostly about the conservation easement part of this bill. Ontario, south of the shield, has only about 1.5% of the land base protected by parks. We're doing very well north of the shield, but south of the shield it's a pretty desperate, low percentage. So it's far less than the 7% that's required to comply with Canada's international biodiversity agreement that they bought into. I think all the stated objectives would have a lot more land in protection south of the shield.

We now have 30-odd land trusts conserving more land in southern Ontario, south of the shield, than all levels of government combined. Just over the last few years, these land trusts have put together 60,000 acres. Our own charity protects 5,167 acres—51 sites—and 14 of those are conservation agreements. So about a third of our

program is involved with the easement discussions in the act.

In the big picture, we're now Ontario's second-largest land trust. It's kind of hard for me to believe it, but we actually have more land in protection than Ontario Heritage Trust, for example, and Ontario Nature, formerly the Federation of Ontario Naturalists. Also, we're ahead of, I think, some conservation authorities in areas protected.

We applaud the act. We think what's being proposed for the Conservation Land Act is very strong, but I do have a couple of specific suggestions here.

(1) We use the phrase "conservation agreement" rather than "easement." I think it would be helpful if the act did the same thing, because an easement means you're allowing something. Basically, what these agreements are doing is preventing things, stopping houses and severances. So it's a misnomer to call it an easement. We think "conservation agreement" covers both the easement idea and the covenant idea. But mostly what these agreements are about is covenant.

(2) We think there should be a consolidated registry for all of these properties that are covered by some kind of an agreement, whether it be with the municipality or a conservation authority or with us, the Heritage Act, the Agricultural Research Institute etc.—although they've never done any, I think. They should all be in one consolidated registry so that a municipality just has to look there; they don't have to go and search title—it's not complicated to figure out who has protection agreements on these lands.

(3) We're suggesting the wording of 6.2 should be expanded. The present wording says "no person shall construct or demolish." We'd like to add to that concept of "no person shall construct or demolish" the words "sever the land or change the land use." The reason we suggest that is that getting a building permit isn't a sufficient trigger. Lots of times people are going to change the land use and put in a golf course or a gravel pit that's not going to be caught by the building code provisions. We think it should be a Planning Act thing; they're changing the land use. We think that the act would be much strengthened if it covers things like severances and land use changes to golf course and gravel pit. So just "land use changes" is the way it would be worded.

(4) We're also suggesting, and have been suggesting for some time, that additional purposes be added to section 3.2. We are pleased that the new ones are added, but we'd like to see walking trails, recreation and areas of aesthetic or scenic interest added. Right now, only the Ontario Heritage Trust can hold agreements that have any teeth on those subjects. We think the land trust can contribute walking trails and recreational facilities to this province in those communities. We think we have a role to play. To be honest, the Ontario Heritage Trust has been resisting that because they'd like to have a monopoly. We don't see why they need to have a monopoly. We think the job would be done better if land trusts are allowed to help with those tasks.

My number (5) is a little bit more controversial. We think we should also be able to look after things like cultural artifacts, buildings, archaeological sites and cultural sites. Once again, only the Ontario Heritage Trust can hold those kinds of agreements right now.

Incidentally, we're only saying that qualified organizations should be able to do that, because not every organization would be able to look after an archaeological site, for example. But where the organization is qualified, we think they should be allowed to do it. The reason we'd like this is that sometimes you're doing two things at once: You're protecting the land, but there's also an archaeological site on it, or a building. Right now, if we want to protect the archaeological site of the building, we have to go running to the Ontario Heritage Trust. I don't want to insult them, but it's a huge job and a big production and it almost never gets done.

We think that communities would be helped by having this scope in their own local land trust. It allows other conservation groups to protect these areas, other than just the Ontario Heritage Trust. It allows greater scope for the donee. Often people are donating these lands. Often people don't want to donate just to government. The only way you can donate trails, right now, is to donate them to the government, so that's not good for many landowners. We think that the likelihood of getting the job done is much increased if we're allowed to participate in protecting these kinds of lands.

That's the legislation. Now I have some administrative procedural things that I think would be a good idea.

(1) The Ministry of Finance has the power to instruct MPAC, and they need no legislative authority to do this, that where conservation easements—I'm going to use that word—exist on the land, that the assessment on that land should be revised accordingly, because that owner doesn't have the full range of development capabilities. So two equal lands; one guy has agreed not to sever it, not to put houses on it, but right now he's got the same taxation as the guy right next door who has no restrictions.

Next, I think that the Ministry of Municipal Affairs and Housing has a kind of checklist that they have municipalities look through before they issue permits. We think this registry and the checking of that registry should be part of that checklist of the Ministry of Municipal Affairs.

The third thing: MNR's biodiversity group needs the resources to do the work to help with this act. We're very frustrated, because their funding has been cut a couple of years in a row. The Environmental Commissioner recommends that MNR get on with the task of protecting our biodiversity, and what's happening? The funds are being cut. So we're not getting the job done.

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I've got some specific problems. We can't get through the backlog of property tax exemptions because the staff aren't there to do the work.

The province's ANSI—area of natural and scientific interest—and wetland designations should be completed.

The ministry doesn't have time to get to Manitoulin to do the ANSI study. We think that's unfortunate. Lots of areas of the province have been covered, but our understanding of what's important ecologically in the province—we have an arm cut off, because a lot of them have never been looked at. We've even tried to take studies to the government so all they have to do is put the rubber stamp on it. They won't do that. They don't have the staff time to even review what we've done and put a rubber stamp on it. I think it's important that this work gets done.

Next, we think there should be transfer funding so that organizations like ours can acquire these lands south of the shield. Right now, no funding is available except—in a footnote, there is some money to do surveys and appraisals, but there's no money to actually acquire land. There is a nice program called the natural spaces program, but the only people who benefit from that are the Ontario Heritage Trust, so any land that's acquired in that program goes to the government. That's not helping conservation groups like ours get the job done.

A little footnote: We have so far only used 14% of provincial funding to protect our \$4.5 million worth of land. So we think we're good value for the dollar, and we'd like to see money put into that.

I'll also add that Ontario is way behind its neighbouring jurisdictions in looking after land around the Great Lakes. Ontario, in the best of years, is putting in \$2 million or \$5 million; these other jurisdictions are putting in hundreds of millions of dollars. I can't understand why Ontario is so different that we're not doing the job that the other Great Lakes jurisdictions are doing.

I appreciate this opportunity to address the committee. I look forward to your questions. We're trying to work in partnership to protect this land for the benefit of all of our grandchildren, and we hope we have an opportunity to get this job done together. Thank you.

The Vice-Chair: Thank you very much. We have three minutes for each party. We'll start with Mr. Prue.

Mr. Prue: Good to see you again, Rob. I haven't seen you for a while.

Mr. Barnett: I've been out doing this instead of municipal stuff.

Mr. Prue: Yes, instead of municipal stuff.

We had another group earlier—land conservation. Does the fact that municipalities are going to be frozen out of energy projects impact what you're saying in any way?

Mr. Barnett: I can't—

Mr. Prue: Section 23: The planning process can no longer be used for any type of energy process whatsoever. Is that going to impact you in any way?

Mr. Barnett: If we have an easement on a property, then our rules would overrule what any other private landowner could do. So if Superior Wind Energy or some other company bought a piece of land with an easement that said, "You can't put wind towers on it," our powers would govern. The municipality should look that up in the registry and say, "Ah, this parcel can't be used for wind generators; it says so right in the easement."

Mr. Prue: Okay, but what if the Ontario government said, "We want to use that for wind"?

Mr. Barnett: Then the only choice left for the government would be expropriation, and that might not be too attractive to some people.

Mr. Prue: I think maybe the last group should have heard you.

The conservation agreements: How many are there in Ontario?

Mr. Barnett: Approximately 100, with conservation groups like ours. There may be more with conservation authorities, but honestly, there are very, very few. The agricultural institute, as far as I know, has never done one. My number would not count those created by the Ontario Heritage Trust, and that's probably the only other significant group. They have some easements on land and others on buildings, but I don't know what their number is. All of the private ones and probably all of the ones with conservation authorities are included in that plus-or-minus-100 number.

Mr. Prue: More time?

The Vice-Chair: About a minute.

Mr. Prue: About a minute. I had one other question here.

It's okay; let it go.

The Vice-Chair: All right. Mr. Sergio.

Mr. Sergio: I enjoyed your presentation very much. I don't have any specific questions. I was just interested in what you had to say and appreciate your coming down to make a presentation to the committee. We have staff in the room here. I'm sure that they were listening to the presentation very attentively as well and will carry the message to the minister, and we'll take it from there. Thank you so much.

Mr. Barnett: Thank you.

The Vice-Chair: Mr. Hardeman.

Mr. Hardeman: I just wanted to quickly touch on a couple of different issues. Your number one item is to include the term "conservation agreement" with the concept of an easement. To me there's a difference. An easement gives the owner of the easement full access to the property in its present state. Whether there's an agreement on what they're going to use it for is irrelevant. If I get an easement across my neighbour's property, it means he can't do anything with the property that would prevent me from crossing it, and it would be registered on title. Whenever they wanted to do anything with the property, they would have to find out what they could do, and that would come up. With a conservation agreement, that wouldn't necessarily happen.

Mr. Barnett: A conservation agreement includes both the covenant and the easement aspects of it; they're merged together in that collection of two words. Normally, the easement that we are granted in one of these conservation agreements is only the right to go and look at the property and make sure the rules are being followed. The easement part of it is fairly small, and that in itself wouldn't restrict building or other things. It's the covenant part that restricts it. In fact, most of our agreements say that nothing in this agreement shall allow the

general public to use the property, so it's only we who have this very specific easement right, which is to go and check that they're following the rules. So that's really the smallest part of the idea.

The big part of the idea is this covenant thing, where they agree not to sever, build new buildings, cut down the trees, hunt—whatever they decide to do. That's the important part. The small part is that we're granted an easement to go and look at it. We've sort of been using the wrong words to describe what we're doing.

Mr. Hardeman: Going on to the other part about MPAC and the value of the property, does an easement devalue the property because it would be designed to its present and existing use?

Mr. Barnett: That's right. Our appraisers calculate that for us. The devaluation ranges from 20% to 80%, depending on which property. An 80% devaluation would come about if you had a wonderful waterfront property but you agreed never to build a building or a cottage on it; it would only ever be used for camping. That would be a pretty big devaluation.

Mr. Hardeman: The last point I wanted to ask you about was the Ontario Heritage Trust and the difference between other land trusts and the Ontario trust, the things they can do that your trust can't do. You want to make them equal. Is there a reason for them having these things, because that's the provincial responsibility and they can do it? Could you see any good reason why they would have everyone else doing the same things that the provincial organization is already doing?

Mr. Barnett: I guess in every aspect of life there is territoriality. I think they're very happy to be the only group that can do some of these things. I can't see a good reason for it for the trail or public recreation areas. We run the Cup and Saucer trail system up in Manitoulin. I don't see why we couldn't create an easement on another piece of trail up there, but right now we can't without going to the Ontario Heritage Trust. They claim that they're the only technical experts in the province. I would have some sympathy if they were talking about archaeological sites or something, but I don't think it's much of a brainer to look after a trail.

Mr. Hardeman: But you also talked about providing funding to purchase more easements. Is there any benefit to the province putting out money towards other trusts being able to purchase easements, as opposed to if an easement needs to be purchased for conservation, let the Ontario Heritage Trust do the purchasing?

Mr. Barnett: Mostly we acquire land, fee simple rights to land. We've purchased three of our 14 easements, so most, 11, were donated. So yes, there is a benefit, because often, for a fairly small sum, maybe 20% or 30% of the value of a property, you as a province or a land trust can prevent development on that property, which is the essence of keeping it green, keeping the migration patterns going. You can achieve a lot without a lot of money.

The Vice-Chair: Thank you for your deputation, and have a good afternoon.

Mr. Barnett: Good. Thank you. Great to talk to you.

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SCHNEIDER POWER INC.

The Vice-Chair: Next we have Schneider Power. As with the other deputations, 20 minutes for your time period. Should you not require all the time for your presentation, I'll take the remaining time and split it between the parties. At the outset, please state your name for Hansard purposes.

Mr. Thomas Schneider: Thank you, Mr. Chairperson. My name is Thomas Schneider. I'm the president and CEO of Schneider Power Inc. Mr. Chairperson and members of the committee, I'd like to thank you for allowing me this opportunity to speak to you about Bill 51, the Planning and Conservation Land Statute Law Amendment bill. I'm here today to convey Schneider Power's support for section 23 of the current bill.

Schneider Power is a Canadian-based developer of renewable energy projects, and my family has over 112 years of experience in the electricity sector. We do focus on small-scale, low-impact wind farms that minimize impact on local communities, wildlife and the environment. We are located across Canada and internationally. Our projects in Ontario tend to be an average of around 10 megawatts, or five wind turbine generators. Our sites include such areas as up in Providence Bay on Manitoulin Island; the area of Innisfil, just outside of Barrie; the towns of Amaranth, Laurel and Trout Creek.

We are here today to comment on Bill 51 because we want to continue to invest in the province and to add more renewable sources to Ontario's energy mix. We understand the nature of the energy challenge faced by Ontario, indeed most jurisdictions, and we believe we can be part of that solution. But we are finding it increasingly difficult to operate in Ontario, given the multiple, overlapping approvals processes and the enormous expense that actually goes along with these inefficiencies. In fact, development and construction costs in Ontario right now are 30% higher than in any other country around the world when it comes to wind development. These added costs are particularly restrictive and are becoming more uneconomical to companies like ours that are investing in smaller, community-based projects. Change is necessary in order to make Ontario competitive and attractive for renewable energy investments.

Section 23 of Bill 51 addresses many of our concerns associated with the current approvals processes for energy projects.

The two-and-a-half-year provincial Environmental Assessment Act and Planning Act approvals process that we must undergo involves much duplication and therefore adds unnecessary burdens on not only the municipalities and the province but also smaller companies such as ours. For instance, municipal zoning amendments and bylaw reviews examine much of the same information contained in the provincial environmental review report. Municipal site plan agreements review location, height,

number of turbines and setbacks from roadways as well as from other properties. Although these issues have already been legislated and are dealt with, they are also duplicated by not only the Ministry of the Environment but also the Ministry of Transportation, the Ministry of Natural Resources, NAV Canada and the Department of Fisheries and Oceans.

Not only are developers such as us asked to present the same pieces of information to several different approval bodies, but changes to a project resulting from one approvals process actually trigger a requirement to return for approvals that have already been granted on another application. Clearly, there are redundancies and a lot of duplication in that system.

The existing process also opens the door to a lot of NIMBY activism in the sense of, "We all want to use power, but don't build the power plant in our backyard." For example, we have had to manage project delays due to a group of recreational pilots who decided to mow their grass fields, call them unregistered airstrips and oppose our windmills so that they can fly over their neighbours' properties in a 10-kilometre radius. Although Transport Canada has rules in place regarding aeronautical obstruction and has granted aeronautical obstruction clearance for all our projects, we're operating in an environment where, for example, a recreational pilot's hobby can hold other landowners hostage—and not just the neighbours, but a 10-square-kilometre radius—by limiting what those landowners can do with their land, which trumps our ability to add clean, renewable energy sources to the electricity grid. Indeed, our company could have about 50 more megawatts of power on-line by now if it weren't for that.

Recently you've read in the news that Canadian Hydro Developers announced a year-long delay in construction of its Melancthon II wind energy project as a result of delays in the provincial and municipal approvals processes. The delays will cost them an additional \$10 million, essentially, in my opinion, making the project unfeasible economically. That's not necessarily a prospect for any energy company looking to do business in the province, let alone companies investing in smaller community projects of 10 megawatts or less, such as ourselves. These inefficiencies are severely impacting developers' ability to do business in the province and our ability to add clean, renewable energy to Ontario's grid at a critical time for our province. We all answer to our investors and shareholders. A lot of times, a question that comes up is, "If it's 30% more expensive to build in Ontario, why are we building in Ontario and not somewhere outside of the province?"

Ontario is struggling with the twin challenges of generating enough energy to meet our needs while ensuring that the energy is safe, secure, affordable and clean, and indeed that it fits within the requirements of our communities. Unfortunately, oil and gas are becoming extremely expensive as much of the world's supply is in countries that are unstable. Like oil and gas, coal is a polluting fossil fuel and there's only a limited supply. We're already seeing a lot of the hazardous

effects of their emissions on our climate and the environment, whether in the form of smog advisories or in the shape of catastrophic hurricanes, floods and melting of the polar ice caps.

As we all know, humidex levels here hovered at almost 50 degrees Celsius last week, proof that this is a real and imminent environmental crisis. At the height of last week's heat wave on August 1, peak electricity usage hit highs of around 27,000 megawatts. That's the highest we've ever had it in the history of Ontario.

One of the solutions to this energy crisis is wind power. Wind power is clean, safe, sound and renewable energy, and it can be implemented within a relatively short time frame. As an energy source, it has moved rapidly from the margins to the mainstream, not only in Canada but the world over. Denmark generates around 20% of its electricity from wind power, while Germany and Spain are the world's biggest wind power generators. Canada has the potential to generate close to 5% of its power from wind by 2010. The great thing about wind power is that if a new technology comes along, wind turbines can be easily removed from a property with minimal impact on the environment, which can't really be said about hydro dams and nuclear plants.

The government of Ontario has indeed shown that it's dedicated to finding a solution to our energy crisis and has demonstrated that renewables will play a significant role in its strategy. In fact, the OPA has recommended that the province reach 5,000 megawatts of wind energy generation by 2025. If we are to meet these goals, we have to create efficiencies in the approvals process.

The government's commitment to supporting wind energy is reflected in the standard offer contracts for projects of 10 megawatts or less announced earlier this year. This measure went a long way towards helping small wind companies such as ours compete in Ontario, and section 23 of Bill 51 will as well.

It's our assessment that section 23 will rectify many of the challenges that we face by streamlining the approvals processes. The bill proposes that projects that undergo a provincial environmental assessment—which essentially all of our projects do—should be exempt from the Planning Act requirements. The environmental assessment process involves the majority of information and assessments that are also gathered via the planning assessment process and is broad enough in scope to address the range of issues covered by the planning assessment process. Other requirements such as aeronautical obstruction and communications interference are actually already covered under federal transportation legislation.

The provincial environmental assessment process is transparent, and municipalities, project neighbours and other stakeholders have the ability to participate and raise issues of concern. As a company, we do welcome the ability to continue to work in close consultation with these groups and the communities through this entire process. Indeed, we have had great success in townships like Central Manitoulin on Manitoulin Island, who worked together with us and saw wind power as a clean

alternative to solving their power problems, even in an environmentally sensitive area such as Manitoulin Island.

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If these changes are not implemented, Ontario risks losing further electricity investment and it'll be virtually impossible for small renewable energy companies like mine to operate here. If this province is committed to increasing its energy supply while lessening dependence on heavy-polluting fuel sources, then change, such as the change outlined in section 23, is absolutely necessary.

Section 23 is a step towards ensuring that we see more electricity added to the grid and ensuring that this added energy meets our collective long-term vision of eliminating our dependence on heavy-polluting energy sources. This is also an important step towards making Ontario attractive to companies looking to invest in our electricity system. Given the opportunity, the wind power industry in Ontario has the potential to not only replace the 10,000 job positions lost in the automotive sector but to attract further billion-dollar investments from multinational turbine manufacturing companies such as Enercon from Germany, General Electric from the US and Vestas from Denmark, who have all shown interest.

I'd like to thank the committee for the opportunity to speak with you this afternoon. I'd be happy to address any questions the committee members may have.

The Vice-Chair: Thank you. We have about three minutes for each party. Mr. Flynn.

Mr. Flynn: Thank you, Mr. Schneider, for a great presentation. With the costs being 30% higher in Ontario, or I guess in Canada—is that right? Is that Ontario and Canada, or is that just in Ontario?

Mr. Schneider: That's actually just Ontario. To give you an example, for the entire permitting process in Ontario for our smaller wind farm up on Manitoulin Island, with everything included, it costs us around \$290,000. In comparison, to do the same process with the same permits in Manitoba is \$60,000. So there's a huge difference versus Manitoba.

Mr. Flynn: Almost 500% more.

Mr. Schneider: Yes. The other big difference is that in Manitoba, it's about a three-month process, whereas in Ontario it took us two and a half years. A lot of it has to do with duplication.

Mr. Flynn: Okay. How much of the costs, as a proportion, are included in that 30%? Is the approval process increasing things by 20%, by 60%? Of that 30%, is it all attributable to the process?

Mr. Schneider: Yes.

Mr. Flynn: Okay, good.

From your experience, the big fear obviously is that by making this change—some people have made the claim that it's going to impact on public involvement in the process, and everybody wants the public to be involved. At the same time, those same people will say, "Wind power should play a big part in our future; just don't build it in my neighbourhood. Just give me the electricity somehow, but don't build it around me."

What is not covered under the environmental assessment process that is covered currently under the Planning Act, and can you think of a way that we could maintain the public involvement but streamline the process and make all sides happy in this?

Mr. Schneider: One of the things we see that's not covered under the environmental assessment is really a local community's ability to determine which area is supposed to have a zoning, let's say, for commercial under their official plan. Every community will plan to have certain areas reserved for certain activities. The one thing is that most wind farms are built on agricultural land. That's pretty much a fact in Ontario, because we need the space and the separation from large buildings. The environmental assessment really covers pretty much all of the main concerns of the community, whether that be setbacks from roadways, setbacks from residences, whether that has to do with impacts on the local community or even with the heritage of the community.

The one thing that the environmental assessment doesn't deal with is the fact that these machines stand about 100 metres high and people will see them. How we can actually regulate that is an open question. In my experience, having built with our partner company over 200 machines worldwide, the first machine is always the most difficult one, because nobody knows what it looks like.

The Vice-Chair: Thank you. We'll have to move on to Mr. Hardeman.

Mr. Hardeman: Thank you very much for your presentation. I want to go to the section that deals with taking the planning authority away from the municipalities. The whole bill is intended to put the planning squarely in the bailiwick of the municipalities. They get the responsibility to design and implement their communities as they see fit, except when it comes to energy projects, and it isn't just wind; it's nuclear, it's all energy projects. All of a sudden, for whatever reason the government feels appropriate, they don't think that should have good planning, because the municipalities shouldn't be involved. You suggest the municipality can get involved in the environmental assessment as a participant, they can tell the Environmental Assessment Board what they like or dislike about the project and then they can let the board make its decision. But the municipality will have no impact on the decision other than as a witness just like any other. Can you tell me why it is that the energy industry believes that it takes longer to do two processes at the same time than one process that does it all?

I do want to continue on that and say that you suggested the environmental assessment does most of what the Planning Act does already so we don't need to do both processes, and you mentioned the height of the building. It would seem to me that visual pollution is something the Environmental Assessment Board would look at; the planning board likely wouldn't. But the planning board would look at whether it was a good idea to put it on the one side of town in the residential area or on the other side of town in the industrial area, which the

Environmental Assessment Board would not do. Can you tell me why it is you believe that the municipality should not be involved in helping to make those types of decisions?

The Vice-Chair: You have a minute to answer.

Mr. Schneider: Okay, I'll try to answer that in a minute.

Really, the problem in this dual process system is the duplication, and the fact that if there is a change made in one process we have to resubmit and get back into the queue with another process. That's the delay. By having one process, we would streamline that. So really, it is the fact that when you change one application because of a review with that body, it automatically triggers a review with another body because you have to change the submission. So there's a duplication.

With regard to the visual pollution and all that, part of that is actually covered under the Ontario Heritage Act as well. A lot of the communities have in their official plans restrictions on what can be built in what area. So it does take that into account.

A lot of the reasons why the energy industry wants to have this freedom are because we need to get away from centralized energy generation. It needs to be distributed generation, smaller generation right across the province so we don't have these major blackouts when a tree hits a power line in the United States.

The Vice-Chair: Thank you. Mr. Prue.

Mr. Prue: I have two questions. The first one is from your statement at the bottom of page 4 and the beginning of page 5, talking about Canadian Hydro Developers. A one-year delay is costing them an additional \$10 million. Where does this number come from? I'm just trying to think of how a one-year delay—did they borrow \$200 million at 5% and have to pay it? And if so, why did they borrow \$200 million in advance of an approval? I just don't understand.

Mr. Schneider: The delay with Melancthon II was that the municipality didn't give all the building approvals and there were further requests by the local community to step up the environmental assessment, to go from an environmental screening to a class environmental assessment. That in itself requires the use of many more consultants and a lot more studies to be conducted in more detail. For example, on the archaeological side, you not only need to do a stage 1 assessment but also a stage 2 assessment. That increases your consulting costs. That's just one of the factors that accounts for this increase in cost. Because Melancthon is such a huge project, the times involved are much higher.

Mr. Prue: Okay, so it's because they're having to pay in order to satisfy the many requirements of many agencies.

Mr. Schneider: Correct.

Mr. Prue: Not just municipal.

Mr. Schneider: Not just municipal, correct.

Mr. Prue: Okay. The statement at the bottom of page 5 also is puzzling to me, if you can explain this. It talks about 50 degrees Celsius last weekend. Yes, indeed, it

was. I don't remember there being a breath of wind, though. Somebody made the statement, and it's probably true, that the summertime, when we need the power the most, is when it's least likely that there would be any wind or any source of electricity from wind. Is that correct?

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Mr. Schneider: Yes, it's correct that the summer months are the least windy across the country, including Ontario. But the idea of the distributed generation principle is that it will be windy somewhere. On those couple of days when it was really hot in Toronto, if you were down at the waterfront, that wind turbine was actually spinning. Just because it's not windy in one part of the province, it certainly could be windy up on Manitoulin Island. So distributed generation has a tendency of mitigating that effect because we distribute it right across the province in different areas and different weather climate zones.

Mr. Prue: The windiest parts of the province, though, are around the Hudson Bay area. That's the place where wind farms would probably even pay for themselves. But we have no way of getting it here. Is that not correct too?

The Vice-Chair: Basically a yes or no answer.

Mr. Schneider: Yes, that's correct.

The Vice-Chair: Thank you very much for your deputation, and I wish you a good afternoon.

FEDERATION OF NORTH TORONTO RESIDENTS' ASSOCIATIONS

The Vice-Chair: Next we have the Federation of North Toronto Residents' Associations, George Milbrandt, co-chair. I forgot to mention that Helaine Becker has cancelled, so we've moved Mr. Milbrandt up.

You have 20 minutes for your deputation. Should you not require the full time, the remaining time will be split between the three parties. I would appreciate it if you would identify yourself for Hansard, by name.

Mr. George Milbrandt: I'm George Milbrandt. I'm co-chair of the Federation of North Toronto Residents' Associations, or FoNTRA.

FoNTRA was founded in February 2001. Two main reasons were to help clarify and strengthen Toronto's new official plan and to bring about meaningful reform to the OMB. We've been presenting proposals to the current government since February 2004.

FoNTRA is a non-profit, volunteer organization that comprises 21 member organizations. Its members, all residents' associations, include at least 125,000 Toronto residents within their boundaries. The 21 residents' associations that make up FoNTRA believe that Ontario and Toronto can and should achieve better development. Its central issue is not whether Toronto will grow, but how. FoNTRA believes that sustainable urban regions are characterized by environmental balance, fiscal viability, infrastructure investment and social renewal.

We would like to thank you for the opportunity to propose some refinements to Bill 51, in particular the

OMB reform portions of the bill, and section 45 of the Planning Act, which deals with minor bylaw variances. The specific refinements are included in appendix A for Bill 51 and appendix B for section 45. The detailed policy refinements that you find in the two appendices were put together by George Belza and Bill Roberts on behalf of FoNTRA and CORRA.

These proposed technical revisions would strengthen the provisions of the bill with respect to OMB reforms so that they actually work in the way described by Minister Gerretsen at a North York town hall meeting held on February 27, 2006. The suggested revisions to Bill 51 in appendix A would empower, rather than disempower, ratepayers' and residents' groups. They would also further empower municipal councils while providing safeguards against abuse.

A general discussion of the main effects of the refinements proposed in the six pages of appendix A may be summarized as follows:

(a) Where council decided to amend its official plan, the OMB would be required to "have regard to" that decision but still consider submissions in support or in opposition without limitations on evidence, including evidence brought before the OMB by ratepayer groups. I should note at this point that, in our opinion, there's a difference between allowing the introduction of new evidence at the OMB and the moving target that many developers offer. They bring a proposal to council and they modify the proposal before the residents even are aware of it. The residents make presentations when they're aware of it. It's further modified, and when we have the required public meeting, it may even be different again. And then it goes to either the committee of adjustment or the OMB and it could be different there as well. Something has to be done to deal with this moving target, which is different than the evidence aspect that I think a number of speakers have dealt with in previous submissions over the last couple of days, yesterday and last Thursday.

Let me continue about some of the effects of the proposals.

(b) Where council decided not to amend its official plan—that is, turned down a proposed development that does not conform to the official plan—the OMB would be required to defer to that decision except in instances of demonstrated unfairness, patent unreasonableness, error in law or fact, or material inconsistency with provincial policy.

(c) Limitations on evidence would apply to proponent appeals—developer-sponsored—of OP amendments not approved by council, but not to ratepayer or other third-party objections thereto.

(d) Dismissal of appeals due to abuse of process would apply to proponents—that is, developers, whether a large developer or an individual trying to do something to their personal properties—as well as objectors, ratepayers.

(e) The OMB's discretion as to the giving of notice, which discretion the board has abused—I have the words

“badly abused”; I don’t know if it’s badly abused but it certainly has been abused—would be stripped away in favour of statutory regulation, so there’s no leeway as to who the board has to give notice to. It’s stipulated. I have an example of a recent case where it was very difficult for the ratepayers to get recognition at the board because they weren’t given proper notice of the hearing.

(f) In addition, provisions pertaining to so-called second-suite bylaws would be strengthened to enable groups to appeal second-suite bylaws that allow the character of neighbourhoods to be degraded.

I’ve got an example of one of the proposed modifications to Bill 51, and I would say just a couple of things about appendix A. The set-up of appendix A is the wording of the current Bill 51, as shown, followed by the suggest revisions. An upside-down v indicates a deletion from Bill 51’s present wording, and underlined material indicates suggested modifications or additions to the language of the bill. So the one example from Bill 51 that I’d like to deal with is part I, the Planning Act amendments, and it’s 2.1, the “have regard to,” which has also come up in a variety of ways from various speakers in the last few days. The proposed wording is:

“2.1 When an approval authority or the municipal board makes a decision under this act that relates to a planning matter, it shall

“(a) have regard to any decision that is made under this act by a municipal council or by an approval authority that relates to the same planning matter; and”. That’s “relates to the same planning matter,” not something that’s different or has been modified on its way over to the OMB;

“(b) on request, consider any information and material that the municipal council or approval authority considered in making the decision described in clause (a) and any submission related thereto, subject to the provisions of subsection 22(7.5).

“The municipal board shall defer to any decision of a municipal council or approval authority consistent with the official plan in effect on the date of the decision, except in instances of demonstrated unfairness, patent unreasonableness, error in law or fact, or material inconsistency with the policy statements issued under subsection 3(1) that are in effect on the date of the decision or material non-conformity or conflict with the provincial plans that are in effect on that date.”

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That’s an example of the way appendix A is set up and the suggested wording, and this is probably one of the key amendments that we would propose to in fact do what the government claims the bill would do. We think there are some flaws in the current wording, and this would deal with that.

The other part of our submission deals with appendix B, a six-page appendix that deals with section 45 of the Planning Act, which is intended to deal with committee of adjustment cases or what are called minor variances. If acted upon, it would solve most of the problems related to committee of adjustment appeals. Currently, many

significant changes to land use designations evade detailed municipal examination by being submitted as minor variance applications. The intent of this proposed refinement to section 45 is to codify a recent Divisional Court decision, the 2005 Vincent decision, that confirms there are four distinct tests, each of which must be satisfied in order to permit, but not require, approval of a minor variance application.

Over the years what has happened, it seems, is that even though the claim is that these four tests should be met for the committee of adjustment to deal with the matter and for the OMB to deal with the matter, many times the only test is the impact test. What we’re proposing is in fact based on this recent Vincent decision that the four distinct tests have to apply. The wording of the proposed change to section 45 is shown in the brief on page 3. I would just like to focus on the four tests:

“... provided that the variance application meets each of the following tests:

“(1) it is minor in size, nature, importance and impact;”—so impact is only one of the aspects of item 1;

“(2) it is desirable for the appropriate development or use of the land, building or structure in relation to the broad public and planning interest;

“(3) upon analysis, the general intent and purpose of the bylaw are found to be maintained; and

“(4) the variance conforms with any official plan in effect on the date of the application.

“For greater certainty, where the four tests are met, the committee retains residual discretion as to whether or not to approve the variance.”

So if the four tests are met, that doesn’t mean the variance is automatically approved; it just means they can consider it. Then the judgment of the committee of adjustment—or, if it goes, of the OMB—has to come into effect.

We would recommend that you amend Bill 51 as detailed in appendix A, and amend section 45 of the Planning Act as detailed above and outlined in appendix B. We ask that your government seriously consider the attached modifications.

I have a note here that if you have any detail questions as to the Planning Act and amendments and all the brackets and subsections and so on, you can contact George Belza. His contact information is here, and he would be pleased to answer any questions.

I would be pleased to answer any questions at this time. On page 4, the list of 21 residents’ associations that are members of FoNTRA is included. I should also note that we’ve had a number of requests from additional ratepayer groups to join FoNTRA. At the present time we’re not taking on new members. It’s not for lack of interest; it’s just that we’re kind of at capacity right now to deal with such a large organization.

That concludes my presentation. I would thank you, first, for allowing us to make the presentation to the committee, and secondly, I would be pleased to answer any questions.

The Vice-Chair: We have about two and a half minutes per party. Mr. Hardeman?

Mr. Hardeman: Thank you very much for the presentation. I want to quickly deal with the issue of the information provided to the Ontario Municipal Board and the fact that we need to have the ability of the public to present to the Ontario Municipal Board based on the application that's before them where, in some cases you mentioned, it may have varied in some instances from where it was when it went through council.

The development industry has been very concerned that they think it's unfair—against natural justice—that as the bill presently is, the municipalities or the public bodies can bring new information to the board for the hearing but the developer can't. Your suggestion would be that the municipality should continue to be able to do that and the ratepayer should be able to do that; the only one who couldn't do it would be the developer.

Mr. Milbrandt: Generally speaking, yes. But there could be circumstances where the developer, because of some situation—evidence that the ratepayers brought forward, which altered the view of the world, if you will, around this proposed development. That could generate the need for the developers to counter what the ratepayer groups brought forward. So generally I would agree with what you said, but there could be some exceptions.

Mr. Hardeman: If that's the case, is it really worth the time to try to prevent them from bringing evidence? If we're going to say everybody can bring evidence in most cases, why are we curtailing it in others?

Mr. Milbrandt: As I understand the bill, as I've read it, we're trying to encourage the developer proponents to bring forth a full picture at the council level, which many times they don't. In my experience over the last 30-odd years, it just depends on who the developer is. Sometimes you get a full picture; sometimes you don't get a full picture until you get to the OMB.

Mr. Hardeman: The other question, if I could just quickly go on—

The Vice-Chair: A very quick one.

Mr. Hardeman: The minor variance: The intent in the bill is that minor variances would go to a local body, as opposed to the OMB, for review if they don't meet these challenges. What's your position on the local appeals body, as opposed to all planning matters going to the Ontario Municipal Board?

Mr. Milbrandt: I think a local appeal body is good. The city of Toronto has a committee of adjustment that hears local appeals, and whatever party is not satisfied with that outcome, they can take it to the OMB. To me, bylaw variances are what should be at the committee of adjustment level or the local planning board level, and it's just amendments to the official plan that should be heard by the OMB.

The Vice-Chair: Mr. Prue?

Mr. Prue: You've given so much detail here and not enough time for me to even read it all.

Mr. Milbrandt: I can appreciate that. That's why I had to select a very limited amount to present today.

Mr. Prue: I'd just like to ask some questions about section 22 of the act. This is on page 4.

Mr. Milbrandt: Four of appendix A?

Mr. Prue: No, at the beginning of what you said. It's restriction of evidence at a hearing. It's your belief that new evidence shall not generally be permitted unless deemed appropriate by the board.

Mr. Milbrandt: That's correct, generally.

Mr. Prue: I take it, then, that you think there should not be a trial de novo but it should just be an appellate body. You haven't come right out and said that. I just want to make sure that that's where you're going with this.

Mr. Milbrandt: Yes, generally that's the case. As I mentioned previously, there may be circumstances where you would want new evidence or new evidence is necessary, but generally speaking, I would agree with what you just said.

Mr. Prue: Okay. We have had some people before us who are suggesting, where the new evidence is deemed appropriate and the information is valid, that it would be necessary to have that new evidence sent back before the municipal council that made the original decision, if such new evidence would have been of such a nature that it may have changed the decision that they made.

Mr. Milbrandt: I agree.

Mr. Prue: You would see that happening as well—

Mr. Milbrandt: Yes.

Mr. Prue: —or would you see the board substituting its own—

Mr. Milbrandt: No. If it's of the nature you've described, that the board deems it could have changed the decision at municipal council—FoNTRA believes; it's not just me—it should go back to the municipal council then.

The Vice-Chair: Ms. Wynne?

Ms. Kathleen O. Wynne (Don Valley West): Hi, George. Thanks for being here.

Mr. Milbrandt: You're welcome.

Ms. Wynne: I just want to follow up on this evidence thing, because you and I have had a number of conversations about this in beautiful Don Valley West. Originally, there was a discussion in the ratepayer community about not wanting to have new evidence at hearings. There was a concern that the developer had the upper hand because there could be studies undertaken and a whole bunch of new documentation that residents' groups wouldn't necessarily be able to match. Is that true?

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Mr. Milbrandt: Absolutely, and that's still true.

Ms. Wynne: So before the legislation was drafted that was a concern.

Mr. Milbrandt: Yes, and it's still a concern.

Ms. Wynne: So the way the legislation has been drafted, there wouldn't be allowance for that to happen on either side, either the residents or the developer. If I understand what you're suggesting, there would be an asymmetry introduced into the bill so that the developer's evidence would have to be complete at the council level—

Mr. Milbrandt: Or fairly complete.

Ms. Wynne: —but the ratepayers and the municipalities would be able to bring new evidence to a hearing. Is that what you're suggesting?

Mr. Milbrandt: Yes. Our general focus has been on the ratepayer groups because, as has been pointed out in previous deputations as well as ours, many times residents aren't even informed. The proposal is in front of the planners at the local level. It may or may not be brought to the residents. They're not aware of it. It depends on the councillor in some cases. When there is a public meeting, the residents may not be fully informed. And most of the time, because of finances and resources, they want to see, in the case of Toronto, what the community council does with the item and what city council does with the item before they go out on a fundraising expedition to see what they can come up with.

An example: Some of you may have heard of the Minto at Yonge and Eglinton. That cost the local community close to \$100,000. We weren't able to match in any way what the developer spent at the OMB, and we were just literally buried.

The Vice-Chair: Thank you very much. That brings us to the conclusion. I would like to thank you for your deputation and wish you a good afternoon.

ONTARIO WATERPOWER ASSOCIATION

The Vice-Chair: Next we will be moving the Ontario Waterpower Association up to the 2:50 time slot. I understand that Paul Norris, president, is ready. Just fire up your computer.

Mr. Paul Norris: I don't want to take up too much of your time fooling around with the computer. I'm completely willing to speak from the slides that I've handed out, if that's a better use of your collective time. You'll miss the map; that's the only thing.

The Vice-Chair: If you're satisfied with that—

Mr. Norris: Absolutely.

The Vice-Chair: Okay. I would just like to remind you that no matter how we're going, you have 20 minutes for your presentation. Should you not require the full time, the time remaining will be split between the three parties. If you could identify yourself for Hansard at the outset, that would be appreciated.

Mr. Norris: Great. Thank you for the opportunity to be here today. My name is Paul Norris. I'm president of the Ontario Waterpower Association. I'm on the first slide of nine, so I don't anticipate it will be much more than 20 minutes at all. I have had the good pleasure of participating on the government's electricity supply and conservation task force, where the issue of site development was of primary concern to our industry and, more recently, on the Minister of Energy's panel on environmental assessment. That's going to be the focus of my discussion today. I'm going to focus entirely on a section of the bill that deals with the relationship between the Planning Act and the Environmental Assessment Act as related to energy projects, and that's section 23.

The first slide is on the Ontario Waterpower Association, just a brief about who we are. We're the collective voice for the province's hydro industry, what's become known as the ubiquitous hydro industry. We're Ontario's primary source of renewable energy. We have about 8,000 megawatts of installed capacity. Our membership includes generators, consultants, service providers and legal consultants. We have about 100 members in the province.

Hydro in the province of Ontario is a fairly diverse electricity source in terms of ownership; it has been for about 110 years. We do have large generators like Ontario Power Generation, Brookfield and others like that. A lot of industrials rely almost entirely on hydro to manage their costs. I can think of Abitibi, Inco, Tembec and others who are using hydro as strategic energy assets. We have a number of private investors, and that constituency is growing. We also have a number of municipalities, and that has been the case, as I say, for more than 100 years: Bracebridge; Peterborough, where I'm from; St. Catharines; Ottawa; Parry Sound—Bala is about to become one—across the province.

The next slide was the only one that really mattered in the slide presentation. The point I want to make here with respect to hydro specifically, and I suspect my colleague from CanWEA made the same point, is that in terms of land use planning decisions about hydro, it is where it is. You can't pick up and move a hydro facility. It's an asset that is geographically distributed across the province. The graph, were you able to see it, shows you 193 operating facilities in the province of Ontario. Up until about four years ago that number was about 500. Some 126 of them are south of the French and Mattawa in organized Ontario, and a number of them in northern Ontario are within 10 kilometres of a municipality. But it is where it is. In terms of land use and resource management planning, we've been through Living Legacy, we've been through a number of other planning initiatives, iterations of the Planning Act, and it's a little different when you're a resource that you can't plan for. What we've seen is that you can plan around, you can plan to eliminate, you can plan to restrict, but you certainly can't plan in terms of land use planning decision-making, in our view.

But it does matter. On the next slide, I have the question posed at the top: "Why does land use planning matter for hydro?" We're managing water, we're not managing land. But in the province of Ontario, the privilege of developing, operating and owning a hydro facility has nothing to do with water; it's all to do with land. It's a riparian right at common law. We have a Public Lands Act. We don't have water resource legislation such as they have in British Columbia, for example, that vests ownership of that resource in the private sector or in the crown. So the privilege of developing hydroelectricity in the province is fundamentally a function of ownership of the bed and the banks of the river.

In Ontario, by virtue of the Beds of Navigable Waters Act, the crown owns the beds of the river in the province

of Ontario, all those that are navigable, with very few exceptions, and certainly all of them in northern Ontario. In organized Ontario, the banks, particularly south of the French and Mattawa, are most often owned by either private citizens or were vested at one point in the crown and shoreline road allowances and now are vested in municipalities. But the privilege of developing hydro-electricity is fundamentally related to those two things: Who owns the bed and who owns the banks. So land use planning does matter.

More importantly, from our perspective, renewable energy clearly in the lexicon of the Planning Act is a matter of provincial interest. We saw some reference in the last version of the provincial policy statement to the incorporation of renewable energy, but certainly not in the context of, for example, the way we would look at aggregates or the way we would look at other kinds of resources that are where they are. But with the target of 5% by 2007, 10% by 2010 and 8,000 new megawatts by 2025, renewable energy is a matter of provincial interest.

Just to put that into context, we have 8,000 megawatts now. It took us 100 years to build it. We've got 20 years left to build 8,000 more megawatts.

I think our main point is that, in our view, it's not a matter of whether or not you should have a publicly accountable, environmentally responsible process for hydro development—absolutely. We're leading—and I'll reference it later on—a class environmental assessment for our industry with First Nations, with other stakeholders, with other interests on the landscape, because it's the right thing to do. We're not suggesting that we don't need a process; we're suggesting that we have one—or many, in fact. In our view, the public interest is served.

We're subject to the provincial Environmental Assessment Act, which is the focus of section 23. You can't build a hydro facility in the province of any greater than zero megawatts without an EA. That's the threshold for us. We're also subject to the federal environmental assessment act by virtue of the fact that we deal with fish and we deal with navigation. There isn't a development being moved through the process that isn't subject to both of those right now.

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We're also subject to water legislation. The Lakes and Rivers Improvement Act is a piece of legislation that deals with putting infrastructure in rivers. That's a process that fundamentally is about public accountability and environmental responsibility. It has as its tenet ecological sustainability.

The Ontario Water Resources Act has just been revised to put a focus on the permit to take water. Again, a process is put in place to engage the public to consider the environment. The federal Fisheries Act does the same thing, the Navigable Waters Protection Act does the same thing, and it can go on and on.

Our point is that we're not looking to be part of a publicly accountable, environmentally responsible process. We have one or more already in place. In our view, section 23 recognizes that in the proposed bill.

I'll give you a piece of what a process looks like in Ontario in the next slide. It is a complex process. From the time that you want to identify an opportunity—not have tenure to a site but identify an opportunity in this province—to the time you commission, the time you're producing electricity, it's easily five years, through the existing process. That process is the same whether you're building 50 kilowatts or 50 megawatts. It's, by definition, the same. There are no exemptions, under any of these other pieces of legislation, on the basis of project size for our industry. Only half of that process is controlled by the proponent; about half of it is in the hands of the regulators, be they environmental assessment, be they federal processes for the Fisheries Act or the other pieces of legislation that I've identified. There's ample opportunity for public engagement and certainly opportunity for local community involvement.

The process steps are not something you can compress for most of these things. While there are some sequential opportunities, it's not as if you can try to do everything at once. It's a stepwise process, and there are definite steps in that process that involve the public and engage the local interest, be it the municipality, First Nations or others.

I wanted to give you a case example. I picked this one because this is an example that was done by a municipality, to give you an idea of what a hydro development looks like in Ontario. This comes out of Bracebridge, Ontario. It's the High Falls redevelopment, in fact. It's a municipally owned water power facility; it has been since 1894. It was the first producing hydroelectric facility that a municipality owned in the province. The proposal that Bracebridge Hydro came forward with after commercialization of the market was to redevelop that facility using the existing infrastructure, no new environmental footprint, and they were going to double the energy output from 700 kilowatts—a pretty small facility—to 1,500 kilowatts. It took four years to go through the process of public engagement and environmental consideration. That's how long it took; lots of community involvement—I went to lots of town meetings—and lots of opportunity for local input that did, at the end of the day, influence what the facility looked like.

I can only suspect that with the standard offer program on the horizon, the program that is to incent new renewable generation, particularly in site distribution systems, that examples like High Falls in Bracebridge will only increase. We have two in Peterborough that are being built right now. I can't imagine any of those being built without local community involvement.

Our advice, in closing, and I'll entertain questions: We would strongly support section 23 of the proposed amendments. We see environmental assessment as a primary vehicle for consideration of the concerns about development on the environment. In fact, as I said before, our association, on behalf of the industry, is developing a class EA precisely for that purpose. We are engaging local stakeholders; we're engaging resource management interests; we're engaging energy interests; we're

engaging First Nations. We're doing that proactively on behalf of the industry. So we think we can deal with the concerns.

Further, we think that municipalities should be encouraged to enable renewable energy projects and protect existing opportunities. Again, it's a resource that is where it is. We can make land use planning decisions that fundamentally compromise the potential for that resource to be realized for future generations. I think the standard offer is a good example of that. We're certainly supporting that. We're reaching out to municipalities to help them understand what a hydro facility looks like. We just delivered a two-day course to First Nations in northern Ontario to help them understand how to build a hydro facility, and we'll do the same thing in the south.

I think, quite frankly, given a year and a half on the environmental assessment panel and previously in the supply mix discussions, the concept of regulatory integration should be more widely applied. Somebody needs to step back and ask, "Are our interests addressed; and if so, how? And if they're not, what are the residual interests that this other piece of legislation can deal with?"

We're subject to 50 or 60 pieces of legislation for every new development. A lot of those have the same two fundamental tenets: involve the public and consider the environment.

With that, I'll close. The picture that I have on the end was the only other good slide I had that warranted putting up. This is inside of London Street generating station in Peterborough, Ontario, where I happen to have the good fortune to live. Those units have been operating for almost 100 years. In 2003, when we had the blackout, we had the good fortune of having this in downtown Peterborough. They ran the electricity from that station, which is about a 2.5-megawatt station, to the hospital and we kept it running.

Thanks for your time.

The Vice-Chair: Thank you very much. We have about two and a half minutes for each party, beginning with Mr. Prue.

Mr. Prue: You started off by saying—and it's true, it's trite—that the water is where the water is. And I don't understand. Other than redeveloping the existing water sites, particularly south of the French River, there's no new water source. If there were, it would have been tapped by now. The only thing that's possible is what you've pointed out at High Falls or what's happening in Niagara Falls as of yesterday: to try to further develop what you already have. I've never heard of a single occasion where a municipality has backed it up or tried to stop it or anything so that section 23 should cause you any umbrage at all.

Mr. Norris: There are opportunities that are being pursued right now in greenfield development in southern Ontario. There are two on the Trent-Severn canal right now, notwithstanding the fact that that's federal jurisdiction. There are greenfield sites.

Having said that, I take your point. The notion, though, is that we're about to enter a stage in public

policy associated with energy, through the standard offer, that pursues as an active objective new renewable energy development and side distribution systems. To have the spectre of having to go through another piece of legislative requirement doesn't make a lot of sense to me. We have the EA process in place. We have numerous other pieces of legislation that, as I say, do the same thing. It doesn't make any sense to me to have the spectre of the Planning Act hanging out there.

Mr. Prue: But it has been there for 100 years and it hasn't harmed your industry, as far as I can see, in any way whatsoever.

Mr. Norris: I can't point to any examples because we haven't built anything in 15 years in Ontario.

Mr. Prue: But in the first 85 years, can you tell me—

Mr. Norris: We closed 300 facilities south of the French/Mattawa between 1946, because we made different electricity choices.

The Vice-Chair: Mr. Flynn.

Mr. Flynn: I don't know if you were here when we had a presentation from the folks from Schneider Power, the windmill people.

Mr. Norris: Tom Schneider? No. I think they're a member of our association.

Mr. Flynn: He claimed that today Ontario as a jurisdiction has 30% higher costs than the rest of the world because of the process that proponents need to go through in Ontario, and compared us quite unfavourably to the province of Manitoba, where they seem to be able to do things a little more quickly.

If you take as a first principle that the public interest and involvement must be served and that is something that just cannot be set aside or diminished in any way, can you see a process that we could employ in Ontario that would allow the public interest to be served, allow the public to be involved, and yet allow the projects to proceed in a much more expeditious manner? If it's taking at least five years now, what should it take? What do you think? How could we serve the public, involve the public, build the sites? Should it be in a year, two years, three years? It should be less than five, obviously.

Mr. Norris: Yes, it should be less than five. It'll never be a year, nor should it be a year. Any prudent proponent spends a year to a year and a half in pre-feasibility, doing their biological homework, their community evaluation, those types of assessments, construction. I said about half of that five years is in the direct control of the proponent.

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What we've been pursuing through our class environmental assessment—and we're not pursuing that because we don't like EA or because we don't like the process—is the concept of one process for one project. That doesn't exist right now. Right now, you have a number of process flow charts that have no linkage. There's no linkage between the water resources process flow chart, the EA process flow chart, the Lakes and Rivers Improvement Act process flow chart. I firmly believe that you can still engage the public, involve the public, respect the public interest, but do it more expeditiously

and more efficiently. I think it serves the public better to have them involved and engaged early, when you can describe the process and go through a single process together, as opposed to giving them numerous opportunities to come in at different stages of the process, answering a question that was probably answered two years ago in the initial site design. That's one of the tenets of our class EA.

Mr. Flynn: Can I just jump in there? So you're saying involve the public earlier and have a single-track process?

Mr. Norris: Yes.

The Vice-Chair: Ms. MacLeod.

Ms. MacLeod: Thank you very much for your presentation, Mr. Norris. We thoroughly enjoyed it; we were just discussing that.

The question I have is, what level of government do you think actually participates the most with its constituents: federal, provincial or municipal?

Mr. Norris: What level of government actively participates directly most with its constituents? Municipal.

Ms. MacLeod: Exactly. So it doesn't really make sense to a few of us on this side of the fence that the first place to cut would be the planning process, the environmental assessment. I understand there are several processes that you have to take part in, but it's very hard for us to fathom when, on the other side, they're giving more powers to the municipality on evidence with the OMB through appeal boards and enhanced design control, that they would actually take the planning process away from municipalities. I think there might be a better way. I understand where you're coming from with one process and the need for linkage. Is there not a better way than to cut the municipality right out of this section 23?

Mr. Norris: I think what you're doing is integrating legislation, as opposed to cutting the municipality out. I think the municipality is still intimately involved. It's a matter of who's driving, right?

Ms. MacLeod: We all represent constituencies and municipalities, and I certainly have worked in the municipality. I know there are a number of former municipal councillors here. The most direct involvement, the people who can drive public participation in any community, seems to be the municipality and the ward councillors. By removing them from this process, I think there's a real concern there for the people who live in those communities. We're not advocating not streamlining this for you, but we do have a severe concern here.

Mr. Norris: I understand what you're saying. I guess I don't see it as removing them from the process; I see it as recognizing that there are at least two, in our case probably more, pieces of legislation that from our perspective achieve the same objectives.

Ms. MacLeod: Yes. I've been through three levels of government, as a policy adviser and now as a legislator, and I can tell you that at all three levels of government the people who are showing up to public meetings are showing up disproportionately at the municipal level. I

think that almost any one of my colleagues here who has served at any level of government other than this one would probably say the same.

Mr. Norris: Sure, if you're talking about if a municipal politician, a provincial politician and a federal politician all having a public meeting on the same night, which one would be better attended. But if you're talking about whether or not a proponent of a water power development or an energy project is capable of engaging the public who have an interest in this project, I don't think that's a matter of comparing which politician can get the most people out; that's the proponent's job.

Ms. MacLeod: I'm talking about which level of government—

The Vice-Chair: Okay, that's it.

Ms. MacLeod: Okay, thank you. I still enjoyed it.

The Vice-Chair: We have come to the 20-minute mark. I want to thank you for your presentation and wish you a good day.

RESIDENTIAL AND CIVIL CONSTRUCTION ALLIANCE OF ONTARIO

The Vice-Chair: Next we have the Residential and Civil Construction Alliance of Ontario. Please step up. Make yourself comfortable. There's water there. Just a reminder: 20 minutes for the presentation. Should you not require the 20 minutes, I'll take the time and split it between the three parties. At the outset, when you speak, I would like you to identify yourself for Hansard.

Mr. Andy Manahan: Good afternoon and thank you very much, Mr. Chair and members of the standing committee on general government, for this opportunity to appear before you today to speak to Bill 51. My name is Andy Manahan. I'm an officer with the Residential and Civil Construction Alliance of Ontario, in addition to my full-time employment with the Universal Workers Union, Local 183. With me is Richard Lyall, executive director of the RCCAO.

The RCCAO is a newly formed alliance which brings together labour and management representatives from across the residential and civil construction sectors. Our members include companies and workers who build both low-rise and high-rise homes, as well as roads, sewers and water mains, bridges and other infrastructure projects. We actually just formed late last fall, and our first submission in fact was on OMB reform. We'll get to that a little bit later. Our most recent report, just to give it a plug, is *The Infrastructure Funding Deficit: Time to Act*, which I think we sent to all the MPPs. Our concern is essentially trying to fit infrastructure with the growth plan with the planning formula. We know it's a very ambitious set of objectives here, but we think generally we're heading in the right direction. We just have some comments.

Bill 51 is of substantial interest to the construction and development sectors in Ontario, including RCCAO. I would like to place on the record at this time that RCCAO recognizes the need for planning reform, and we

support the government's general direction in this area. For example, we are in alignment with the government's decision to resist the call for abolition of the Ontario Municipal Board, as was advanced by some advocacy groups and politicians. We think that the government made an absolutely correct decision in this regard. However, we do feel that Bill 51 does require amendment to ensure that once it is passed by the Legislature it will provide a fairer, more efficient and timelier planning and decision process for land use in Ontario. The fact that we are sitting here today is encouraging to the members of RCCAO. We believe that the government's decision to refer this legislation to the standing committee after first reading sends an important signal that there is a recognition that there might be a need for changes to get the balance right and hopefully to improve the process.

The RCCAO has prepared a written submission, which you all have. That details what we believe are the most important concerns with Bill 51. Certainly, we haven't done an exhaustive go-through point by point, but during our time here this afternoon I would like take the opportunity to touch briefly on the various concerns we have with Bill 51.

Application of the policy in force at the time of decision: This is the most significant concern that RCCAO has with Bill 51, the requirement that all planning decisions be consistent with policy statements and provincial plans in effect on the date of the decision. This is a major departure from the current practice, where it is the rules in place at the time of application which prevail. We are asking that section 4 of the bill be deleted. There must be a reasonable cut-off point to ensure that everyone who has acted in good faith and has followed existing planning processes does not have their effort and often significant costs wiped out at the 11th hour, particularly when the planning approvals process can take years.

Limitation on evidence for appeal: We are concerned with the proposed new subsections 17(44.2), (44.3) and (44.4), which provide that, for private parties only, information and material which is before the municipal approval authority at the time of application can be admitted to an OMB appeal, yet at the same time public bodies will have the right to bring in new evidence without restriction. These subsections create a significant lack of balance between private and public bodies during the OMB appeal process respecting the submission of information and material. There is no justification for such inequitable treatment. Again, we request these subsections be deleted.

Complete applications: RCCAO understands the rationale for establishing a requirement for a complete application. However, we have real fears that leaving such determinations entirely to municipalities will result in hundreds of different standards across the province and many arbitrary decisions. We recommend that the province establish by regulation a definition of "complete application" to be followed by municipalities on a consistent basis.

Matters of provincial interest: Bill 51 amends section 2 of the Planning Act to provide two additional considerations in making planning decisions. We support the objective of sustainable and transit-intensive development. Indeed, promoting greater investment in public transit is one of RCCAO's major goals. However, to avoid uncertainty and endless debate between experts, the government should consider amending the bill or adding a regulation to define the term "development that is designed to be sustainable, to support public transit and to be oriented to pedestrian development."

The bill also provides that decisions under the Planning Act will have to "have regard to" previous municipal decisions. While it has always been clear that OMB decisions need to take into consideration previous municipal decisions, the standard of "have regard to" will introduce an element of inflexibility. We propose that the wording of section 3 of the bill, amending section 2.1 of the Planning Act, require that the OMB or other approval authority "shall consider" the municipal level decision.

Employment lands: Regarding the new restrictions that this legislation places on the conversion of employment lands to other uses, we are also recommending an amendment so that the provisions related to areas of employment do not come into effect in a given municipality until that municipality has reviewed its employment lands policies, published proposed new policies and allowed time for public comment. Again, what we're hearing from some of the RCCAO members is that certain provisions related to this do not really reflect reality in the marketplace.

1520

Site plan approval: RCCAO also has concerns with section 15 and the amendments to the site plan approval provisions. As well as the obvious difficulty in finding common agreement on what is good design with respect to matters such as colour, materials, finishes and architectural details, there is a real danger of NIMBY forces using design criteria to exclude, for example, low-cost housing projects or certain intensification projects that they really don't want in their area. If these provisions are retained to allow for local site plan approval on this detailed basis, we strongly believe that they should apply only to infill projects, rather than new greenfield development. It is with infill projects in existing neighbourhoods where the concerns about maintaining the existing community texture and architectural vernacular are focused.

Transition provisions: This is probably one of the higher-up ones in terms of our ranking of priorities on the bill. The transition provisions for Bill 51, as drafted, apparently will be brought into effect retroactive to the date of introduction on December 12, 2005. I guess that's about eight months ago now. In our opinion, there is no urgent issue that requires Bill 51 to depart from the normal legislative custom that it comes into effect on the day it is proclaimed. We ask that the provision to make it retroactive be reconsidered and that Bill 51 become law on the day it is proclaimed following royal assent.

I would like to thank the committee for this opportunity to share our concerns on Bill 51. Richard or I would be happy to respond to any questions you might have.

The Vice-Chair: Thank you. We have about four minutes per party. We'll start with the government side.

Mr. Flynn: Thank you for the presentation. It was one of the more balanced we've heard so far, I think. You addressed some of your concerns and yet brought out some of the points that are very positive.

I did receive something in my office about your organization. I thought it was very well presented. Obviously, your membership would have an interest in us having a very vigorous, dynamic construction environment. You want to see the building continue; you want to see the infrastructure continue to be renewed. So it was interesting to hear your perspective on this.

Some of the amendments that you've proposed—for example, where you talk about sustainability and that we need to define what sustainability is, would you suggest that the provincial government provide that definition? Do we need to give some guidance?

Mr. Manahan: I think some guidance would be preferable. Certainly there are some definitions under the growth plan for the greater Golden Horseshoe that talk about transit supportive development, but we think it needs to be fleshed out a little bit. There's too much room for interpretation by different municipalities or other jurisdictions that have a role in the planning process. I think if we could tighten up certain definitions, that would make the whole process more streamlined.

Mr. Flynn: A few groups have also commented on just what a complete application is. If you talk to the towns or the cities, they'll tell you one thing; if you talk to the industry, they'll tell you something else. Do we need one clear definition of what a complete application is for the province? Others have come forward and said, "Let us sort it out ourselves," in Mississauga or in Oakville. Would you prefer to see it province-wide?

Mr. Manahan: I'll start with my answer and maybe Richard can add, because I think we both have opinions. I don't think there's an easy answer. We could probably spend the entire afternoon just talking about complete applications.

The way the process has worked in many jurisdictions is, to get your foot in the door a developer often will be encouraged by a municipality to submit what they have just to get the process going. I think that works. It helps streamline. If there's other critical information that can be provided later, that makes a lot of sense.

With the whole direction of the planning reform and not wanting to hold up something—there are certain municipalities like Toronto that, through their development application review process, have defined what a complete application is. I think we can get there eventually, but I don't think, even with a definition, that you're going to be able to get there overnight because of the differences between small and large municipalities.

I'm certainly going to go to the AMO conference next week and talk to some of the municipal folks there and find out their opinion. So I don't have a complete answer, to use a pun.

Mr. Flynn: Would you be supportive of a design review team at the municipal level that included some form of representation from the industry itself?

Mr. Manahan: I think the industry should definitely be there but, again, architecture and design is such a subjective area. Personally, and despite what we've said here, I don't think the Vancouver model would necessarily work in all the jurisdictions in Ontario.

Mr. Flynn: Overall, you're in favour of the bill, but you'd like to see some changes. Would that summarize—

Mr. Manahan: Some tweaking or some major deletions, yes.

The Vice-Chair: Thank you. Mr. Hardeman?

Mr. Hardeman: Thank you very much for your presentation. I found it interesting that the number one point you made was the issue of the timing of the decisions and the fact that all applications will be judged and must comply with the policy that's in effect the date of the approval, not the date of the application.

Mr. Manahan: Yes.

Mr. Hardeman: Then the last item is the timing of implementation and the retroactivity in the bill. I guess what I find interesting, and maybe a quick comment on this, is that the retroactivity is only half as bad as the future events, as policies may change—that all of a sudden an application that's made the day after the bill is implemented would in fact be judged on policy that's put in place three years later.

Mr. Manahan: Interesting point, and I guess the point I tried to make in the presentation is that often the developer, in terms of greenfield projects, in any case, will buy land perhaps even 20 years out, but let's say on average it's 10. I'm not sure exactly what the number is; it varies all over the map. The number of studies and the costs that have to be incurred, whether it be for environmental, heritage, conservation or preserving of neighbourhood amenities, that sort of thing, is endless. In our view, the retroactivity relates to the fact that while you're going through and having all those studies done, there's a certain law in place, and many of our members have gone through in good faith with those laws and we just don't want a change at the very last minute saying there's a new game in town.

Mr. Hardeman: The other issue I just wanted to touch on quickly was the colour and design, the architectural facets of a building. I want to say I did spend a number of years being mayor, directing and trying to guide council in the right way, and I don't think you could find a worse example of someone who could choose colours and architectural significance of buildings in my community. I guess I don't really see that that's a good approach, to let the local council decide what colour a building should be painted.

One of the things that I think is very important is that as we look around Ontario, we see a lot of significant,

identifiable buildings, identifiable as to their use, such as every McDonald's building in the province looks the same. This would allow municipalities not to allow McDonald's to build in their community because they would decide that they don't like the architectural look of that building.

Mr. Manahan: Just on that point, in terms of retail, I have seen, certainly in Europe and in places like Banff, where they do want to preserve a certain architectural look to the town, they've said to those establishments, "We don't want the big arches," or "We don't want the big signs. Try to make them small or integrate them into the façade of the building a bit better." So I think municipalities should still be able to have that sort of control. But what we're talking about is primarily major subdivisions, where one group may like a brick façade, another may like siding, another may like green roofs, and someone else may like sloped roofs. So you get into endless debates.

Mr. Hardeman: We've had a lot of presentations through our hearings process about the inability to include new evidence at the Ontario Municipal Board hearings. The development industry has concerns that it isn't fair that the municipality can bring evidence in but the developer can't. We've also heard that the public can't bring in evidence either. Today we had a presentation where they suggested an amendment that would allow municipalities or public bodies and the public to introduce new evidence, just not the developer. It goes to the complete application: A developer should have all the evidence available in their original application to clearly show what it is they're going to do, so they should never have to bring any more evidence. Could you explain that to me?

1530

Mr. Manahan: That would completely straitjacket the developer, and it's completely unfair. What's good for the goose is good for the gander, I guess, is my simple way of responding to that.

The Vice-Chair: Thank you very much. Mr. Prue?

Mr. Prue: A couple of questions. I just want to be clear what you're asking for under employment lands. Are you asking that the employment lands provisions stay as they are in the act? Are you asking that they be changed? Are you asking that mixed use might be allowed? I'm not entirely clear.

Mr. Manahan: You know what? Could we get back to you with a more detailed explanation on that one, because quite frankly, we put together this submission fairly quickly?

Mr. Richard Lyall: I guess it would stay the same, but in terms of before any final decisions were made, that the municipality have a kick at the can, because depending on what industries are going in to a certain municipality, they can vary between municipalities. Of course, as we know, for some industries now the facilities themselves take up an enormous amount of space, but there isn't a high per capita employment base there, i.e., warehousing-type facilities and that kind of thing. For

example, in a higher-density, higher-commercial type of mixed environment you'd have a much higher per capita employment base than if you get into, say, a municipality that's close to the 401 corridor where there's enormous warehousing. So you can have those kinds of changes and differences there that could be—

Mr. Prue: The reason I'm asking that is because we have had representations from communities in the Georgian Bay area—one of them—that have tourism as an industrial base, that we recognize it and that in fact that's the kind of buildings that are taking place there. We've had big cities saying, "What about mixed use," where they're building apartments where you have your business downstairs. We're certainly seeing more and more of those. When you put in your written response, could you include some of those examples and where you're coming from on those?

Mr. Manahan: Yes, we'd be happy to do that.

Mr. Prue: Okay. The second question I have relates to retroactivity, and I must admit to being equally as puzzled as you are. The government introduced this bill eight months ago this week, and here we are. I haven't the slightest clue why the initial draft bill was retroactive to that date. In your studies, in your preparations, have you come across any rationale to make this a retroactive bill? I haven't seen one like this for a long time.

Mr. Manahan: I guess that's why we're here. We're just arguing for the royal assent to be the date.

Mr. Prue: The same as every other bill, or nearly every other bill.

Mr. Lyall: Nearly every other bill.

Mr. Prue: Okay. My last question—and this is not meant to be any umbrage to you at all; I just have to make sure I know where your organization is coming from and where it's going to be. I know there were some difficulties with the union. This is the one with the Americans coming in and the trusteeship and all of that. Does your participation in this predate the trusteeship? Is it part of the trusteeship? What happens if it flips back? I need to know whether you're still going to be part of this group. I can turn around a year from now and say this is what you believe in, and somebody turns around and says, "No. Those were the other guys." So I need to know that.

Mr. Manahan: I was helping draft some of the bylaws for RCCAO last summer and last fall, and I was there at the inaugural meeting. I've been involved every step of the way with the reports.

Mr. Prue: Okay. So it doesn't matter which union this is, whether it's the Americans coming in or the Canadians, or whether the old president comes back; it doesn't matter. You're still going to be there.

Mr. Manahan: Well, let's face it. We're on Canadian soil, so if Americans have a different idea or a better way to do the planning process, I'm willing to listen, but we're looking at Queen's Park legislation here.

Mr. Prue: Thank you.

Mr. Sergio: I want to let you know that we as Liberals have nothing against McDonald's, believe me. We love their hamburgers.

The Vice-Chair: On that, I would like to thank you for your presentation and wish you a good afternoon.

Mr. Manahan: If only they served beer there.

The Vice-Chair: I would like to just remind the committee that amendments are due August 23 and public written submissions by August 28.

On a lighter note, I would like, on behalf of the committee, to wish Ms. MacLeod a happy anniversary tomorrow.

This committee stands adjourned until clause-by-clause consideration on August 29.

The committee adjourned at 1535.

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Official Report of Debates (Hansard)

Tuesday 29 August 2006

Journal des débats (Hansard)

Mardi 29 août 2006

**Standing committee on
general government**

Planning and Conservation
Land Statute Law
Amendment Act, 2006

**Comité permanent des
affaires gouvernementales**

Loi de 2006 modifiant des lois
en ce qui a trait à l'aménagement
du territoire et aux terres
protégées

Chair: Linda Jeffrey
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Tuesday 29 August 2006

Mardi 29 août 2006

*The committee met at 1006 in room 151.*PLANNING AND CONSERVATION
LAND STATUTE LAW
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT DES LOIS
EN CE QUI A TRAIT À L'AMÉNAGEMENT
DU TERRITOIRE ET AUX TERRES
PROTÉGÉES

Consideration of Bill 51, An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts / Projet de loi 51, Loi modifiant la Loi sur l'aménagement du territoire et la Loi sur les terres protégées et apportant des modifications connexes à d'autres lois.

The Vice-Chair (Mr. Jim Brownell): Good morning, ladies and gentlemen. The standing committee on general government is called to order. We are here today for the clause-by-clause consideration of Bill 51, An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts.

I would like to start off by asking, are there any comments, questions or amendments to any section of the bill, and, if so, to which section?

Mr. Ernie Hardeman (Oxford): Before we get into clause-by-clause, Mr. Chairman, I noticed we have on our desk here quite a number of presentations that were not presented to the committee but were sent to us in writing since last we met, and I appreciate the staff and all the work they did to put them together. I wondered if, for the record and for posterity, we could get unanimous consent to read these into the record so they would be on the record for future reference as the province of Ontario is dealing with this very important act.

The Vice-Chair: We have Mr. Hardeman looking for unanimous consent.

Mr. Jean-Marc Lalonde (Glengarry–Prescott–Russell): Can I comment on that? I believe we have received most of them previously from the clerk, and I had the chance to read some of them before, if not all of them, so I wouldn't support this motion.

The Vice-Chair: Do we have unanimous consent on this?

Mr. Michael Prue (Beaches–East York): This is the first time I've ever seen these. Were these sent some-

time? I mean, I know I was away last week. Were they sent somewhere?

The Clerk of the Committee (Ms. Susan Sourial): Yes, they were sent electronically to all the MPPs.

Mr. Prue: Okay, because there's more than an inch worth of stuff I've never seen before sitting right here on my desk.

The Vice-Chair: Unanimous consent? No? We do not have unanimous consent.

We're into part I of the Planning Act amendments.

Section 1: We have a PC motion, subsection 1(1). This is page 1, I believe, of your notes.

Mr. Hardeman: I move that the definition of "area of employment" in subsection 1(1) of the Planning Act, as set out in subsection 1(1) of the bill, be amended by adding "but excluding areas of mixed uses" at the end.

The reason for this: We had quite a few presentations during the course of our hearings where concerns were expressed on behalf of the people presenting that in areas where it was mixed use, the rules that applied to lands of employment should not apply to areas of mixed use, because in fact it may be primarily areas that wouldn't be covered if it didn't have part of employment in it. This is intended that the general terms of the Planning Act would continue to apply to areas of mixed use and would not be exempted because they were lands of employment.

The Vice-Chair: Any further debate on this?

Mr. Mario Sergio (York West): This is indeed against what the bill is proposing, that the motion would exclude the areas of mixed uses, and we cannot support it.

The Vice-Chair: Any further debate?

Mr. Hardeman: I wonder if I could get the parliamentary assistant to explain that again, that this would be against the intent of the bill.

Mr. Sergio: Yes, indeed. The motion would exclude areas of mixed uses from the definition of areas of employment as proposed in the bill. Therefore we cannot support it.

Mr. Hardeman: I think we have a misunderstanding as to the intent. The reason it is written the way it is is because the bill does not mention the areas of mixed use. An area of mixed use is not necessarily primarily—or maybe only a very small portion of it may be—employment lands. This is really intended to clarify that employment lands are just that: employment lands, not lands that have a number of uses but also have some

jurisdiction or some employment lands. It's not intended to, nor does it, take away from the bill other than it allows development under the normal Planning Act where mixed uses are involved. It still doesn't change the intent of the employment lands.

Mr. Sergio: As a final comment, this again would limit the ability to further redefine and give the ministers the opportunity to deal with the true regulations with respect to areas of employment. That is why we cannot support the motion.

Mr. Prue: Just to add, the proposal that's been put forward is supported by a broad range of groups, including the Urban Development Institute and Pembina, which don't often see eye to eye but are agreed upon this. I think maybe the government should reconsider.

The Vice-Chair: Okay; we've had debate on this.

Mr. Hardeman: Recorded vote.

Ayes

Hardeman, MacLeod, Prue.

Nays

Balkissoon, Flynn, Lalonde, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Next we have a PC motion—subsection 1(1). I believe we have a typo here. I believe it should be 1(3).

Mr. Hardeman: I stand corrected if that's what it's supposed to be. Maybe we could ask the clerk to make sure. Okay. I move that the definition of "provincial plan" in subsection 1(1) of the Planning Act, as set out in subsection 1(3) of the bill, be amended by adding "in accordance with the procedures set out in section 3."

The Vice-Chair: Any debate? Any comments?

Mr. Hardeman: This is, again, to clarify the issue of a provincial plan, as it's defined in subsection (3), to make sure that it applies here too.

The Vice-Chair: Anything further? All those in favour? Opposed? The motion is lost.

We're moving on to page 3, subsection 1(3). This is a government motion.

Mr. Lou Rinaldi (Northumberland): I move that clause (f) of the definition of "provincial plan" in subsection 1(1) of the Planning Act, as set out in subsection 1(3) of the bill, be amended by striking out "made" and substituting "made or approved."

The Vice-Chair: Any debate?

Mr. Prue: It's not really a debate—and I realize this may just be housekeeping—but could the parliamentary assistant and/or the mover explain to me what the difference is between the previous wording, which was simply "made," and substituting "made or approved"? What is this intended to do?

Mr. Sergio: The motion dealing with the definition of "provincial plan" is a technical change that would broaden the authority of the minister to prescribe plans

not only made by the minister but also those that are approved by the province.

Mr. Prue: Wait a minute. It's provincial plans that are made by the minister or those approved by the province. So it's a provincial plan which isn't made by cabinet but which is approved?

Mr. Sergio: And that's part of the province, yes. That's provincial plans, if they are approved by cabinet, yes.

Mr. Prue: So this is broadening it so that the cabinet can do it as well as the minister? Is that what this does?

Mr. Sergio: I would say cabinet is the government, so it has to go to the government if it goes to cabinet.

The Vice-Chair: Anything further on this amendment? All those in favour? All those against? The motion is carried.

We now move to page 4. It's a government motion on subsection 1(5).

Mr. Lalonde: I move that subsection 1(5) of the bill be struck out and the following substituted:

"(5) Subsection 1(2) of the act is amended by striking out '17(24) and (36), 34(19)' and substituting '17(24), (36) and (40), 22(7.3), 34(19).'"

The Vice-Chair: Any comments?

Mr. Prue: Again, I have to ask—and perhaps Mr. Lalonde or the parliamentary assistant can explain—why this amendment is there, why it's different from the one before, and what it does differently, because, quite frankly, I cannot tell from this motion or from what was written there before how this is any different and I don't know whether to support it or not. What is the difference between this and the old subsection 1(5) that you've struck out?

Mr. Sergio: There's a bit of a difference. This motion is a technical change to include a reference to subsection 17(40) in the public body restrictions of subsection 1(2) of the Planning Act. Further, this change maintains the one-window planning appeal process which limits the ability of provincial ministries to make an appeal only to the Ministry of Municipal Affairs and Housing.

The Vice-Chair: Any further comments on this?

Mr. Hardeman: Yes. I'd follow up the question from Mr. Prue. I just need to know what the change actually is. Obviously, there must be a reason. Most of it is identical. What is added to or taken out of the present section of the bill?

Mr. Sergio: As I said, this change maintains the one-window planning appeal process which allows the provincial ministries to make an appeal to the Ministry of Municipal Affairs and Housing.

Mr. Hardeman: What part of the present section—

Mr. Sergio: It refers to subsection 17(40), the public body restrictions of subsection 1(2) of the Planning Act.

The Vice-Chair: Any further comments? If not, I'll call the vote. All those in favour? Those opposed? The motion is carried.

Shall section 1, as amended, carry?

Mr. Hardeman: Recorded vote.

Ayes

Balkissoon, Flynn, Lalonde, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The section carries.

We now move on. Please bear with me. I've never chaired a clause-by-clause, so be patient with me, and I thank you.

Mr. Prue: You're doing a fine job, Chair.

The Vice-Chair: It's to keep track, this road map that I have here, and I thank the—

Mr. Hardeman: Mr. Chairman, I notice this is the first time that you're chairing the clause-by-clause. I've done this many times, but you're getting ahead of me. You're doing it so efficiently that I can't keep up.

The Vice-Chair: Okay. Let's carry on.

We'll move on to section 1.1 of the bill. We have on page 5 a government motion.

Mr. Kevin Daniel Flynn (Oakville): I move that the bill be amended by adding the following section:

"1.1 The act is amended by adding the following section:

"Information and material to be made available to public

"1.0.1 Information and material that is required to be provided to a municipality or approval authority under this act shall be made available to the public."

The Vice-Chair: Any comments or debate on this motion?

Mr. Hardeman: Again, I need an explanation of what it is we're doing.

Mr. Sergio: During the delegation presentations, there were a lot of requests with respect to additional information. Bill 51 proposes to allow municipalities to request additional information and material, all of which must be available to the general public.

The Vice-Chair: Anything further?

Mr. Prue: I support the principle, but there's nothing in here that says when they have to be given to the general public. Is it at the same time? And if it isn't, why? You might give it to them a month or two months later—

Mr. Sergio: Well, I think—

Mr. Prue: —after which it's no good.

Mr. Sergio: Mr. Chairman, I don't want to jump in all the time and cut the member short, but I think other sections of the bill will deal exactly with that.

Mr. Prue: Another section will deal with it. Okay.

Mr. Sergio: The timing, yes.

Mr. Hardeman: Hopefully, the parliamentary assistant is right that it's going to be explained more thoroughly later, but I think it's important—as it's written here, I'm not sure who is going to provide this information and when it's provided. So when somebody makes an application, does the information that's in the application

go directly to the public at the same time or is it after the hearing has been held that the municipality is going to provide it to the public? The third option, of course, is that it must be provided in a public meeting.

1020

Mr. Sergio: The applicant would always be supplying the information. It's only one person. The applicant has to supply the information. As we move through the bill, a lot of the sections will deal with as to when and what information, new information, how much information, last-minute information. I think that as we move through the bill, we will get to some of the answers here. But directly in answer to your question, the applicant will have to provide all the information requested.

Mr. Hardeman: I just need it clarified, Mr. Chairman. When the applicant makes an application, does that information on the application immediately become a public document? Under the present structure, that wouldn't be the case; it's private information until it goes to the planning authority.

Mr. Sergio: I believe the municipality has the obligation to inform a local group's organization within seven days of receiving an application.

The Vice-Chair: Okay. You've heard the motion. All those in favour? Those opposed? Carried.

Shall section 1.1 carry? All those in favour? Opposed? It's carried.

There are no amendments to sections 2 and 3. Shall sections 2 and 3 carry? All those in favour? Opposed? Carried.

We go to page 6, section 4. We have a PC motion.

Ms. Lisa MacLeod (Nepean–Carleton): I move that clause 3(5)(b) of the Planning Act, as set out in section 4 of the bill, be struck out.

The Vice-Chair: Any comments, debate?

Ms. MacLeod: This is a concern that this section creates a moving target for those involved in the planning process. This is especially concerning as it relates to the point referenced just prior related to consistency with the provincial policy and plans at the time of decision. Further uncertainty and confusion will result with adoption and plans at time of decision of this provision if a number of agencies are permitted to create provincial plans. It may be unclear with a provincial plan that the proponent's application applies to a more alarming—is that with the government's proposal that application decisions be consistent with the plan in place at the time of decision. The more provincial plans being created, the more opportunity there is to having the perverse effect of reversing decisions.

The Vice-Chair: Any further comments? Okay. Mr. Hardeman.

Mr. Hardeman: I think there's an inherent problem in the bill the way it is and the consistency. This goes to the comment about "shall be consistent with" provincial policies. It's going to be a big problem in the rural part of the province as we look at the policy for preserving agricultural land. The province has a policy statement on preserving agricultural land for agriculture.

The Ministry of Natural Resources also has a policy on aggregate extraction, that you can't use that property for something else until you extract the aggregates. To be consistent with both of those policies is going to be very difficult, if not impossible. The way the bill is presently written, no decision can be made on either one on that piece of property if there are two policies that apply to the same parcel of land. So I think it's very important that that was clarified, and that's why I think it's so important that we eliminate that section so we don't have that conflict.

Also, as that policy of one of those changes during the term of the application, if presently the province says that of those two policies the agriculture one is the predominant one, it's the one that will take priority. If that principle changes and says that we've decided that aggregates are becoming a rare commodity so we are going to give it higher priority than preserving agricultural land, during the time of an application, they have to go back to square one because they cannot be consistent with that policy. So I think it's very important that this section be eliminated.

The Vice-Chair: Any further comments? Mr. Prue.

Mr. Prue: I just have a question of the mover. Would this not have the effect, though, of having municipalities, councils, the OMB make decisions which are not in conformity with plans like the greenbelt and the greater Golden Horseshoe and that kind of stuff? Would that not have that effect?

Ms. MacLeod: I think that the real issue here is exactly what Mr. Hardeman said, and it's which plan is actually taking precedence. That's not clear.

Mr. Sergio: I don't want to dwell too long, but that's exactly why we can't support the motion, because the proposed motion would strike out clause 3(5)(b) of the Planning Act as proposed in the bill. Indeed, the motion would delete the requirement that decisions under the Planning Act shall conform with provincial plans. Actually, you're doing exactly that, and we can't support it.

Mr. Hardeman: I think the operative clause is not the "consistent with"; it's that it must be consistent with the plan in place at the time of the decision. The concern is the changing of the provincial plan during the process of an application. In fact, the application is in and it's consistent with the policy of the time, but we know that governments can change policies, and if, during the review of this application, the policy changes, they have to go right back to square one. There's no certainty in the act to deal with that.

The Vice-Chair: Mr. Sergio.

Mr. Sergio: Yes, just quickly. I think that a lot of the stuff the member may be bringing forth may be explained and included in some other portion of the bill, so we wouldn't want to jump ahead of it.

The Vice-Chair: Okay. We've had the debate. All those in favour of the motion?

Mr. Hardeman: Recorded vote.

Ayes

Hardeman, MacLeod.

Nays

Balkissoon, Flynn, Lalonde, Prue, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Moving on: page 7, section 4. This is a PC motion.

Ms. MacLeod: I move that clause 3(6)(b) of the Planning Act, as set out in section 4 of the bill, be struck out.

For reasons stated in the previous motion, with the inconsistency and the perverse effect of reversing decisions—that's why we move this forward today.

The Vice-Chair: Any further comments, debate? All those in support?

Ms. MacLeod: Recorded vote, sir.

Ayes

Hardeman, MacLeod.

Nays

Balkissoon, Flynn, Lalonde, Prue, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Shall section 4 carry? All those in favour? Opposed? Carried.

Now we move to section 5; no amendments to section 5. Shall section 5 carry? All those in favour? Any opposed? Carried.

Moving on to page 8, section 6. We have a PC motion.

Mr. Hardeman: I move that subsections 8.1(1), (2), (3) and (4) of the Planning Act, as set out in subsection 6(1) of the bill, be struck out and the following substituted:

"Local appeal body

"8.1(1) If a municipality meets the prescribed conditions, the minister may by bylaw constitute and appoint one appeal body for certain local land use planning matters, composed of such persons as the minister considers advisable, subject to subsections (2), (3) and (4).

"Term

"(2) A person who is appointed to the local appeal body shall serve for the prescribed term, or if no term is prescribed, for the term specified in the bylaw.

"Eligibility criteria

"(3) In appointing persons to the local appeal body, the minister shall have regard to any prescribed eligibility criteria.

"Restriction

"(4) The minister shall not appoint to the local appeal body a person who is,

"(a) an employee of the municipality;

“(b) a member of a municipal council, land division committee, committee of adjustment, planning board or planning advisory committee; or

“(c) a member of a prescribed class.”

1030

The Vice-Chair: Comments?

Mr. Hardeman: We heard a lot of comments during the presentation about the local appeal body and who would be on the local appeal body and how it would be structured. Some presenters seemed to think that in fact it was a locally appointed body—that council, the same body who makes the planning decisions, would appoint the members to the appeal body to hear the appeals. That generated a lot of concern because it should be an impartial third party, not people on the body whose appointments depended on the same voices who made the original decision. They saw that as clouding the decision that would come from it. There was some thought that it should be a totally provincially appointed body, almost a smaller version of the Ontario Municipal Board that would be appointed just to look after those two criteria for the local municipality.

This amendment is intended to provide clarity that it is a local body; it will be locally appointed people to the body. The restrictions of who is not eligible to be on it are clear in this amendment, but the actual appointment would be made by the minister, as opposed to the local council. The minister does not make the original decision so he is in a better position to be able to appoint impartial third parties to the board, recognizing that he's going to pick them from the same community that they're going to make decisions for. I think this would provide a truer appeal body than allowing the local municipality to appoint. It appears to review the application.

Mr. Sergio: Just briefly: I concur with some of the comments from the member. However, the motion does not deal with who the members are going to be and who they're going to be appointed by, other than establishing this particular body, if you will, which many delegations were requesting or in support of, as you justly mentioned. Therefore, your motion proposes to remove council's authority to establish a local appeal body and provides that authority wholly to the minister. I think this would be contrary to what you really want, to what local municipalities were requesting: to have some more authority and establish their own appeal body to deal with minor issues.

The appointments to the various appeal bodies there: I think we'll see it in other areas. I have to concur with you that it perhaps should come from the minister.

Mr. Hardeman: I think, just quickly—and it may not be clear enough to the government side—the first section of the amendment is indeed the ability of the municipality to qualify. If they decide that they would want that local appeal body, then the minister would appoint that. Maybe it needs to be clearer that it's not an option for the minister that he not appoint it. But if the municipality qualifies under the regulations to have their local appeal body, I just can't imagine the minister not agreeing to

allow them to have it, and then he would make the appointments. This isn't a matter of the minister deciding, which he already does under the rest of the act—he gets to decide whether they qualify to have a local appeal body. This says how it's to be appointed, where they qualify.

The Vice-Chair: Any further comments? All—

Mr. Hardeman: Recorded vote.

Ayes

Hardeman, MacLeod.

Nays

Balkissoon, Flynn, Lalonde, Prue, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Next, on page 9 we have a government motion. Mr. Balkissoon.

Mr. Bas Balkissoon (Scarborough–Rouge River): I move that section 8.1 of the Planning Act, as set out in subsection 6(1) of the bill, be amended by adding the following subsection:

“Local and upper-tier municipalities

“(1.1) For greater certainty, this section applies to both local and upper-tier municipalities.”

The Vice-Chair: Comments?

Mr. Prue: Just a question to the mover: We both came from Toronto city council. I know that that was a single-tier municipality, but before amalgamation, when Toronto had both upper and lower, the planning aspects were almost universally given to the lower-tier municipality. What is the intent to include the upper-tier municipality? I have some very real difficulty involving them in the planning process and I don't know why your amendment is doing that. Perhaps if you could explain why, I might support it.

Mr. Sergio: If I may, Mr. Chairman, either the upper-tier or regional municipalities, if they so wish, may create their own appeal body with respect to their own rules and regulations, or the lower-tier municipalities may have the local appeal bodies as well.

Mr. Prue: But what things could the upper-tier municipality possibly do on local planning matters?

Mr. Sergio: On a regional plan it deals with regional issues instead of the local, smaller municipality.

Mr. Prue: But these bodies are being set up for committee-of-adjustment decisions.

Mr. Sergio: Minor issues, yes.

Mr. Prue: How would that fall into the regional plan?

Mr. Sergio: The regional may have regional issues as well, or upper-tier.

Mr. Prue: So they both have a planning body and you'd have to go to both?

Mr. Sergio: But you may have an area that doesn't have a local municipality, just a regional municipality.

The Vice-Chair: Mr. Hardeman.

Mr. Hardeman: Yes. I would hate to explain the good things the government is doing, but there is a case in my municipality. In fact, the consent authority is with the upper-tier municipality.

Mr. Prue: So they'd have their own appeal body.

Mr. Hardeman: Well, according to this, this is what they're suggesting.

Mr. Sergio: If they so choose.

Mr. Hardeman: Presently, the way the act is written, without having the upper tier having an appeals body, it means that in Oxford county all the land division applications, all the consent approvals would have to go the Ontario Municipal Board, because they would not refer them to an appeals body at the lower because all the other planning matters are at the local municipalities. If you're going to have the jurisdiction at two levels, then you do need to have the authority to have the appeal body at two levels, though I totally disagree with the type of appeal body that's being structured.

The Vice-Chair: Okay. We've had comments. All those in favour of the motion? Opposed? Carried.

Next, page 10, we have a PC motion, subsection 6(1).

Mr. Hardeman: I move that section 8.1 of the Planning Act, as set out in subsection 6(1) of the bill, be amended by adding the following subsection:

"Appeal to OMB

"(9.1) An appeal lies to the Ontario Municipal Board from a decision of a local appeal body."

The Vice-Chair: Any comments?

Mr. Prue: If I can ask a question, would this not negate the benefit of autonomy provided to local municipalities?

Mr. Hardeman: No, I don't believe it does. It just says that when the local body does not deem it appropriate, the OMB must hear the appeal.

Mr. Sergio: Just briefly, Mr. Chairman, it was made quite explicit to the members of the committee from a number of delegations that they would like to have that authority; that that authority rest with the local municipalities and their decision is final when it comes to minor issues. So what this motion would do, indeed, is allow local appeal bodies' decisions to be appealed to the Ontario Municipal Board. We don't want that, and they don't want that either.

Mr. Prue: And Ernie, with respect, I don't want that either.

Mr. Hardeman: I would just point out that unless something is done with the present structure, if there is no appeal to a decision or the local decision-makers decide to agree with the application, even though it is contrary to the provincial policy—in fact, that's the only thing the Ontario Municipal Board hears under the new act. If it's contrary to the provincial policy, it will not go to the OMB. This suggests that it would have to go to the OMB if it is against the provincial policy statement.

1040

Mr. Sergio: Briefly, for the benefit of the member, Mr. Chairman, we are dealing here with very minor issues: setbacks, whatever. Appeal to the OMB will be

there. I would say again, let's not jump ahead of ourselves. We have many motions ahead of us. We have a long day, and we'll be dealing with a lot of that stuff, which I'm sure the member wants to get into. But this one deals specifically with local minor issues and, definitely, you don't want those issues to go to the OMB every time. The local municipalities want the power to deal and have the final say at the local level.

Mr. Hardeman: Just one final comment. I'm just noticing here in my documentation that there is a concern that this is an unfair process. If it's a large project, if it's a big issue, it goes to the Ontario Municipal Board. If it's a small application and an individual has the same decision, only it's not big in the eyes of the decision-makers, it can't possibly go to the OMB. I think that's wrong. Everybody is entitled to the same hearing, the same justice. This is taking away the right of appeal for small applications for a small individual who's doing the same thing, only in a small way. That's being eliminated because it just goes to the local board and it stops there. They have no right to appeal that decision.

Mr. Sergio: To appease the member again, a big application or a small application makes no difference for an OMB appeal. This deals with small issues—setbacks, a site plan of a minor nature—and those decisions would be resting with the local municipality or body. An application still would be available to you.

Mr. Prue: I don't think it's fair to say that there's no appeal. I just can't let that lie. There are appeals through the courts. Anyone can take the case—the local municipality or the board—to the Divisional Court. I suggest that it would stop a lot of frivolous appeals that we're currently seeing at the OMB on minor matters. The person, if they strongly believe it, would have to argue it in front of a judge.

The Vice-Chair: We've had the discussion. All those in favour of the motion? Those opposed? The motion is lost.

Page 11, a government motion.

Mr. Rinaldi: I move that subsections 8.1(12) to (15) of the Planning Act, as set out in subsection 6(1) of the bill, be struck out and the following substituted:

"Same

"(12) For the purposes of subsections (11) and (15), an appeal is a related appeal with respect to an appeal under a provision listed in subsection (5) if it is made,

"(a) under sections 17, 22, 34, 36, 38, 41 or 51 or in relation to a development permit system; and

"(b) in respect of the same matter as the appeal under a provision listed in subsection (5).

"Dispute

"(13) A person may make a motion for directions to have the municipal board determine a dispute about whether subsection (11) or (15) applies to an appeal.

"Final determination

"(14) The municipal board's determination under subsection (13) is not subject to appeal or review.

"OMB to assume jurisdiction

“(15) If an appeal has been made to a local appeal body under a provision listed in subsection (5) but no hearing has begun, and a notice of appeal is filed in respect of a related appeal, the municipal board shall assume jurisdiction to hear the first-mentioned appeal.”

The Vice-Chair: Any discussion on that?

Mr. Hardeman: Could I have the parliamentary assistant explain this for me, please?

Mr. Sergio: Yes. There are a couple of technical changes as well that are proposed to subsections 8.1(12) and (13) to clarify mainly when the Ontario Municipal Board has jurisdiction to hear planning appeals that would be before a local appeal body, and another technical change to subsection 8.1(15), which clarifies that the OMB would be required to hear those consent or minor variance appeals related to matters in the OMB jurisdiction.

Mr. Hardeman: Maybe the parliamentary assistant would not be able to do that, but could you tell me what an application would be that went to the local appeal body, the process—how would that get to the OMB? The applicant makes an application to have it heard at the OMB instead of at the local appeal body?

Mr. Sergio: It would depend on the nature of the application. If it is minor in nature, I don't think it would go to the OMB. There would have to be a reason for a major request for an appeal in a particular application for it to go to the OMB. The OMB would have to have jurisdiction on that matter as well.

Mr. Hardeman: I'm not quite sure I understand. Who decides on the nature of the appeal in order to make it go to the OMB?

Mr. Sergio: Very minor issues are dealt with, and the authority is final, at the local appeal bodies. If there are issues in a particular application that are of an OMB nature and they are beyond the local appeal bodies, then either side can appeal to the OMB.

Mr. Hardeman: I'm still confused. Who decides the nature of the appeal for it to go to the OMB?

Mr. Sergio: I repeat again, if the changes are minor, they should be dealt with solely by the local municipalities and the local appeal bodies. I don't think the OMB would have jurisdiction over that. If the changes would be larger, if you will, or more of a substantive matter, then the OMB would have jurisdiction in that and the applicant or the local municipality can appeal to the OMB.

Mr. Hardeman: I still can't quite get it clear. I sat 14 years on a committee of adjustment. Every application that comes to the committee of adjustment is a minor variance. The applicant has decided it's minor. Now, how does it change from that for it to go to the OMB because it is not a minor variance? Who decides that it becomes an application worthy of the OMB?

Mr. Sergio: Staff is here; we can ask staff. But it's my opinion, the way I read this, that if the local municipalities, when dealing with an application, see that this is not a minor matter, then the local municipalities won't be referring those issues to the local appeal body because

they may be of a bigger nature. Therefore, that decision won't be resting with the local appeal body.

The Vice-Chair: Mr. Prue had a question.

Mr. Hardeman: Okay, I'll come back to it. Maybe I'm not making myself clear.

Mr. Prue: I do. I just want to understand. If a developer appeals the decision, if the developer for some reason doesn't like the local body, thinks the people on the local body are too pro-neighbourhood, thinks they may be anti his developments in some kind of way, what is to stop him—this is going to allow, as I see it, that they're going to be able to go straight to the OMB and the OMB is then going to usurp the community input and deal with the process itself. That's what I see this doing. Is that what the intent is?

Mr. Sergio: No. I believe that if the local municipality makes a decision, if the decision has been made and there is a minor decision that should be referred to the local appeal body, if the local municipality sends that decision to the local appeal body, the local appeal body decision is final; there is no appeal. So the local municipalities would have to make a decision that it's over and above what they may be sending to the local appeal body to go to the OMB for an appeal.

Mr. Prue: But if I can, section 13 says “a person may.” This isn't saying the council does it. This is like anybody can do it. So a developer can use this as a way of getting around the local municipality.

Mr. Sergio: Again, if I can help, if it's a minor issue and it's referred to the local appeal body, that decision is final with the local appeal body.

1050

Mr. Hardeman: Going on with this one—and I don't want to prolong it unnecessarily but I think this becomes quite critical—I would say, in my tenure of 14 years on a committee of adjustment, 75% of the applications going to a committee of adjustment are based on being minor variances. So if a municipality, in the planning process, deems the answer to be no, it's because they don't believe it's a minor variance. According to this, to me that would mean that the applicant could then immediately take it to the OMB, because if it's not minor, it doesn't have to go to the local appeal body. I don't believe that council can say no to a minor variance and then say, “We think it's a minor variance, so it should stay with the local appeal body.” I just don't know how a local municipality could make that decision. Maybe we do need staff to explain this better, because I think it's totally undoable.

Mr. Sergio: Disputes with respect to decisions at the local appeal body level are not appealable to the OMB. That is a final decision of the local appeal body, and it's not appealable to the Ontario Municipal Board. I can't say any more than that. The committee of adjustment is being replaced by the local appeal bodies.

Mr. Hardeman: I'll just read the amendment to the parliamentary assistant: “If an appeal has been made to a local appeal body under a provision listed in subsection

(5)"—that means council has made a decision and they have referred it to the local appeal body—

Mr. Sergio: Where are you reading that?

Mr. Hardeman: In your amendment.

The Vice-Chair: Page 11.

Mr. Hardeman: So the council has made a decision and referred it to the local appeal body. They're finished. "... (5) but no hearing has begun, and a notice of appeal is filed in respect of a related appeal, the municipal board shall assume jurisdiction to hear the first-mentioned appeal."

So the council has made a decision, they refer it to the local appeal body, the applicant doesn't like it, he appeals it, no one has any more say, and it goes directly to the OMB. That's what this is doing. It is circumventing the local appeal body. Maybe I shouldn't speak against it, because this is exactly what I tried to do in the last amendment that the government voted against.

Mr. Sergio: For the benefit of the member, could we have staff clarify this point?

The Vice-Chair: Can we have staff clarify this point? Please identify yourself for Hansard.

Mr. Irvin Shachter: I'm Irvin Shachter from legal services branch, Municipal Affairs and Housing.

Just to clarify how this particular section works, when a municipality has met the prescribed requirements and has put in place a local appeal body, that local appeal body is to be the only appeal body with respect to two kinds of matters: consents and minor variances. They could also hear a consent with a minor variance. That's the jurisdiction of the local appeal body. There would be no appeal from the decision of the local appeal body.

Regarding subsection (13) in the proposed motion: Just to bring it to your attention, the only change and the reason for the motion is the addition of the words "or (15)." The reason that was done was to try to have subsection (15) read a little bit cleaner and to introduce the term "related appeal."

If I can now talk about when a matter would go to the Ontario Municipal Board, should there be a situation where, for example, a proponent would have a zoning and a consent together relating to the same lands, those would be considered a related appeal. Both of those matters would go to the Ontario Municipal Board. There would be no discussion, there would be debate in that respect. It says the board "shall" assume jurisdiction with respect to those matters. It also applies to matters such as official plan amendments and things like that. So any time you have another kind of planning application that's connected with the consent or the minor variance, it goes to the OMB.

The reason that subsection (13) is there was a recognition that there might be circumstances where it wasn't clear as to whether the matter was a related appeal or not. So it was to import the concept of a very expeditious process for a third body to determine whether in fact it was a related appeal or not. Subsection (13) is actually not an appeal to the Ontario Municipal Board; it's a motion to the Ontario Municipal Board. As you might

remember, this carries over a provision that's currently in the present act relating to site plan conditions. Somebody can, on a summary basis, go to the OMB and ask for almost like a ruling. This would work the same way.

I'm pleased to answer any questions you may have.

The Vice-Chair: Any further comments, questions?

Mr. Hardeman: Thank you very much for the explanation; it makes it much clearer. You mentioned that on these applications we need a third party to make a decision of whether it is a related appeal or a related issue on the same application. You're suggesting that the third party is the Ontario Municipal Board.

Mr. Shachter: Under subsection (13), that's correct. As you know, the section is clear on its on face in terms of what's considered to be a related appeal. It actually defines it in subsection (12) and then keeps that similar concept in subsection (15). But as I said, it is a recognition that there may be circumstances where a municipality and a proponent may be arguing about what the appropriate jurisdiction would be, and it was determined that in that case it was more efficient not to have the matter go to a court, for example, for a determination but to go to the board.

The Vice-Chair: Thank you for your clarification. A question?

Mr. Prue: I have a question, then. What if the Ontario Municipal Board, upon hearing the motion, determines that it ought to go—can they send it back to the municipality? Can they say, "This does not involve a zoning matter"? Because that's what is not clear here. What this says is that they shall assume the appeal.

Mr. Shachter: As a matter of fact, what's contemplated to be done is the board would make a decision, not on the substance of the matter but on whether, to use your example, the zoning application would constitute an appeal related to the consent. So should the board determine that it's not a related appeal, that's correct. What would happen is, that matter would not necessarily go back but the consent, for example, would be heard in the proper jurisdiction. It would be heard at the local appeal body and then the OMB would separately hear the zoning matter.

So you could have the outcome, where as a result of the board's decision on a summary referral, that the board could hear both of the matters if it was determined that the zoning and consent were related appeals, or they could be split up if the board determined the zoning was not a related appeal to the consent.

Mr. Prue: Okay.

Mr. Hardeman: Can I ask one more question on that? It's exactly the same as Mr. Prue just asked. If the board in the first instance on the motion decided that they were not connected, but obviously the developer or the applicant believed they were connected—that's why they went to the OMB—what happens if the two appeal bodies decide differently on the two applications? It was a consent and the motion says, "Yes, but the development is not really contingent on that consent being granted." Which one overrides which?

Mr. Shachter: There should be no impact and one should not override the other. Once the board has determined that they're not related, it shouldn't make a difference if one body makes one decision and one makes another decision.

The Vice-Chair: Thanks for the clarification. We've had debate and comments. All those in favour of this motion? Opposed? Carried.

Page 12: I believe, because we had the government motion carry, this is a PC motion —

Ms. MacLeod: Yes, it's been carried.

The Vice-Chair: It's not required.

Ms. MacLeod: Exactly.

The Vice-Chair: We'll move on to page 13. This is a government motion.

Mr. Lalonde: I move that subsection 8.1(23) of the Planning Act, as set out in subsection 6(1) of the bill, be struck out and the following substituted:

“Restriction

“(23) This section does not authorize a municipality to,

“(a) establish a joint local appeal body together with one or more other municipalities; or

“(b) empower a local appeal body that is established by another municipality to hear appeals.

“City of Toronto

“(24) This section does not apply with respect to the city of Toronto.

“Transition

“(25) This section does not apply with respect to an appeal that is made before the day a bylaw passed under subsection (5) by the council of the relevant municipality comes into force.”

1100

The Vice-Chair: Any comments on this motion?

Mr. Prue: Perhaps a question: I'm puzzled about how this does not apply to the city of Toronto. It applies to 450 other municipalities across Ontario; why does it not apply to Toronto?

Mr. Sergio: I believe that the city of Toronto already has that particular power.

Mr. Prue: Okay. It's in the City of Toronto Act.

Mr. Hardeman: If it's required not to apply to the city of Toronto, then does this section do more than just say that they can't have joint appeal bodies?

Mr. Sergio: Again, it refers to the upper and lower or the larger and local municipalities.

Mr. Hardeman: It goes back to the question that was raised earlier about having two appeal bodies. This section actually says you have to have two appeal bodies; you can't share one.

Mr. Sergio: You have to have two appeal bodies, the local and the regional, the upper tier—

Mr. Hardeman: The county of Oxford could not set up an appeal body to hear applications of consent and minor variances and all the municipalities of Oxford would share that service; they all have to set up a separate appeal body.

Mr. Sergio: Yes, but the act would give every municipality that wants to establish a local appeal body the authority to do so.

Mr. Hardeman: I guess my problem is, why would the government be interested in saying that the county of Oxford could not set up an appeal body to hear all consent and minor variances in the county regardless of which level of government made the decision? It just doesn't make sense to say that you can't have a single appeal body hear applications from two joint municipalities, yet they can hear the same application for the whole county.

Mr. Sergio: I'm sorry, I don't get the question, Mr. Chair.

Mr. Hardeman: This section is saying that we're going to have to have nine appeal bodies in Oxford county in order to use the local appeal authority—nine different ones.

Mr. Sergio: Existing? This is in their existing bylaws?

Mr. Hardeman: Presently they don't have an appeal body.

Mr. Sergio: Exactly, then. If they don't have an appeal body at the moment, as he is suggesting, if they want to establish a local appeal body, the act will allow that regional municipality to establish their own appeal body.

Mr. Hardeman: Yes, but this prohibits the county of Oxford from setting up an appeal body that can hear appeals in the county of Oxford. We have to set up nine.

Mr. Sergio: Are we reading two different things here, Mr. Hardeman?

Ms. MacLeod: I think what we're concerned with on this side is, you've actually created nine new layers of bureaucracy in Oxford county rather than one appeal body for the county. You're restricting the ability for all the municipalities—

Mr. Sergio: No. I mean, I think I have given an explanation to suffice—I want to make sure that they understand what the motion is doing. I wouldn't mind calling on staff again to explain more fully so that we don't have any doubts in their minds. Who would like to come?

The Vice-Chair: Once again, step forward and identify yourself for Hansard.

Mr. Shachter: Good morning. I'm Irvin Shachter from the legal services branch, Municipal Affairs and Housing. It is intended that only the jurisdiction that has the authority over the specific kind of application would be able to set up the local appeal body. For example, in the county of Oxford, if the lower tiers are the only level that have the authority to issue consents, then that would be correct; only the lower tiers would be able to establish local appeal bodies. On the other hand, if you have a municipality where there's an upper tier that does the consents, then that upper tier could set up the one local appeal body for all of the municipalities under it.

Mr. Prue: I just want to start thinking about—even though I'm from Toronto—small-town Ontario. These things cost a lot of money for local municipalities. We

have many of them that are 400, 500, 600 people, who may want to be involved, who may want to combine with other nearby municipalities, nearby places, and try to do something together to cut the costs. This would prohibit them, though, from doing that.

Mr. Shachter: That's correct, but at the same time it's also a recognition of the jurisdiction. You'll remember that if the lower tier is the only level that has jurisdiction with respect to a specific matter, you'd be giving the authority to an upper tier that didn't have jurisdiction to deal with that matter.

Mr. Prue: No, but I'm more concerned about three or four small municipalities in proximity getting together and saying, "We could have one appeal body. This works for us. Our three communities are within 50 miles of each other. We can each appoint two members, we can have a six-member panel, or each appoint one member and have a three-member panel. We can split the costs three ways. It works for us; we don't mind." But you're saying that this cannot happen.

Mr. Shachter: From a legal point of view, that's correct.

Mr. Hardeman: Again, going back to the local one that I understand, the problem we have is that all consents are at the upper tier with the land division committee. All minor variances are at the lower tier, and all planning matters are delivered by the planning department at the upper tier. No local municipality has their own planning department.

This amendment says, "Oh, and one other thing you have to do: You have to set up nine different appeal bodies if you're going to have a local appeal body," as opposed to letting the county, who provides all the planning services, have an appointed appeal body, because they have to have an appointed appeal body but they have to have it for consents and only consents. All the minor variances must go to eight different appeal bodies. They will be staffed by the same staff, because we only have one planning department in the whole county. It just doesn't make any sense. I think for an amendment to be put forward that would create that kind of a situation is a mistake.

Mr. Lalonde: I need a clarification. I guess Mr. Shachter could answer that one. Oxford county is a good example for my own riding also. The upper tier in my riding has one official plan for all, but some of the municipalities have their own control for the zoning. In this case, could four of the eight municipalities have a local appeal body and the other four under the upper-tier body? Can it be done? Eight municipalities; if some have their local appeal body and the others don't have, it goes to the upper tier. Can it be done that way?

Mr. Shachter: The provision contemplates that a municipality would, within the area of its jurisdiction, be able to set up a local appeal body. You'll recollect that it's not a requirement; it is discretionary. So the municipality can, for whatever reason it may determine appropriate, not wish to set one up. But if you have a circumstance where the local municipalities are the

consent-granting authorities or the local municipalities are the minor variance-granting authorities, then you could have a circumstance where not every municipality within a region would conceivably have a local appeal body.

Mr. Lalonde: But those that don't have it could go to the upper tier.

Mr. Shachter: Those that don't have a local appeal body, any appeals would go to the Ontario Municipal Board. You'll remember that it's only the existence of the local appeal body that changes the appeal process. Without the local appeal body, the status quo is maintained. Nothing changes from the way the planning process currently is today. For example, consents or minor variances would still be appealed to the Ontario Municipal Board. It's only that when the local appeal body is in place that an appeal would be going to that particular body rather than the Ontario Municipal Board.

Mr. Hardeman: The intent of the act and the changes to the Ontario Municipal Board and the appeals tribunals that are going to be set up—local tribunals—is to reduce the amount of applications going to the Ontario Municipal Board.

Mr. Shachter: That's what I understand.

Mr. Hardeman: The second thing, of course, is: The reason that the government has decided that we should have fewer applications going to the Ontario Municipal Board is because of cost, because for a minor variance to go to the Ontario Municipal Board, both the applicant and the municipality spend a lot of money, and the province spends a lot of money on the hearings at the Ontario Municipal Board for something that's minor.

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First of all, this amendment, with your explanation, would tend to say that we're going to find the savings for the larger municipalities who have many applications and set up their own tribunals so they can save some money, but small ones don't have to bother. They can stay with the more expensive and more cumbersome system because they can't afford to set up their own appeals body. Then, just in case they look for a more economical and effective way of doing it by sharing that service with their upper tier or with their neighbouring municipality, we say, "Oh, no. You can't do that. If you can't afford one of your own, send them all to the Ontario Municipal Board, and pay the bill there." I can't understand, and maybe it's a political question, what rationale there is for saying that municipalities, since these appeal bodies, we've all been told, are going to be impartial third parties to hear appeals from councils—why councils cannot send it to an appeal body in a neighbouring municipality and share that service.

Mr. Shachter: I think, with all respect, I'm going to defer the answer to that question. It does tend to be a government policy issue rather than a legal matter.

Mr. Hardeman: Exactly, and I know Mario will explain it very well.

Mr. Sergio: No, I think we have dealt with it long enough. Mr. Shachter has responded to the question. I think that's it. No political issues here.

The Vice-Chair: Okay.

Mr. Hardeman: That's not good enough. I need an explanation before we can have this go to a vote. We can keep this debate going for three days, but unless we get some kind of answer, then we can't carry on.

Mr. Sergio: You're asking for—

Mr. Hardeman: A principle.

Mr. Sergio: No, you're asking a political question, so you want a political answer, and I'm sorry, I cannot provide you with it. There is no such thing. We have a motion in front of you. We have given you an explanation. You may support it; you may not want to support it. That's the end of the story. It's not a political question.

The Vice-Chair: Okay—

Mr. Hardeman: I have further comments, Mr. Chair. In fact, I have a whole lot of things I'd like to read into the record while we're at it.

The question isn't a political question. I want to know the rationale, why there is an inherent problem with the same body that makes the decision needing to have the ownership of the appeal body; why two municipalities appointing a joint appeals body would not work. Because that's what this amendment is intended to do: make sure that you never have joint appeal bodies.

We have the Ontario Municipal Board, which is supposedly the purest part of the system, that every municipality in the province of Ontario shares for appeal purposes. But when we're looking at local appeals, we can't have two neighbouring municipalities sharing the same appeal body. I'd like to know the functional rationale for that to happen. It's not politics; it is, why would that work better if it's owned by the individual municipality as opposed to letting the county of Oxford have an appeal body that everyone in Oxford county who has a planning matter relating to a minor variance or a consent application could go to that board and have their application heard as an appeal? That's the answer I need.

Maybe we have some rationale. I'm sure that the ministry has some rationale to prepare this amendment that says, "This is why we're doing that, because we don't think individual municipalities—we think individually they're honest enough, but collectively they can't appoint a body that would work." I don't know what the rationale is, and I'd like to hear that rationale. Until then, I don't think we should proceed until we have that rationale.

Mr. Sergio: With all due respect, I think Mr. Shachter has answered the question. I suppose there is some room in the regulations where this would allow perhaps two municipalities to decide among themselves who has authority over what. I don't take the threat that we cannot proceed unless he gets an answer. There is a motion here in front of the member himself. He may seek support and not get it. He may not like the answer, but I don't think he should be threatening the committee to proceed or not to proceed. I think we are willing to call another staffer and give further explanation, but I don't think you should be threatening the committee and saying, "We won't proceed anymore unless I get an answer." After all, you

may like the answer that has been given to you or you may not like it, and vote accordingly.

The Vice-Chair: Mr. Flynn.

Mr. Flynn: I don't want to get in the middle of something here, but I do have an opinion on this issue, and I understand the frustration of Mr. Hardeman. He and I have been around local politics for some time.

There's always been a bit of friction between things that are done at the regional level or the upper tier and things that are best handled at the local level. That is something that has a history since the advent of regional and county government and isn't going to go away.

What this motion is doing, in my opinion as a former local councillor, is continuing the divisions of power that have been established and have been respected and are still being honoured today by the local government officials in the variety of jurisdictions. What this says to a constituent is that if your application is heard in the first place by a level of government, it will continue to be heard by that level of government right throughout the appeal process.

It just clarifies that there is not a division of powers, that for some reason the region or Oxford county is not going to step into this debate where the initial decision was made at the local level. Otherwise, if you take that argument on further you would say, "Why aren't minor variances done by Oxford county in the first place?" They're done at the local level for very specific reasons, and what we're saying is that for those very specific reasons, the appeals should be at that level as well.

Still, at the end of the day, the flexibility is provided by the motion that it's not compulsory that you even have an appeal body. It's an option to have an appeal body that's granted by this legislation.

Mr. Hardeman: Again, Mr. Chairman, this amendment is not about whether the upper tier is trying to take jurisdiction from the lower tier and whether they're going to have disagreements. It just says that if the municipalities in Oxford county want the ability to set up a hearing board that's going to hear applications for consent and applications for minor variances, they can't do it because of this amendment, because they can't share that service. Oxford county does the consent authority, so they can set up a local appeals body to hear the appeals to consent, and the Oxford county planning staff will staff that committee and they will work with that.

The local municipalities, all eight of them, can, if they would like, set up their own appeals body, or they can let the Ontario Municipal Board keep doing it, but they can't share that service with the same planning department and the same—Oxford county council is totally the mayors of the local municipalities plus two extra representatives from the city of Woodstock, so they're all the same representatives, but they can't use that appeal body because of this amendment.

I would like to know what the purpose of the amendment is. Why is it that we don't believe that the upper and the lower tier, if they wish to do so, can set up an appeals body to hear all planning decision appeals as they

relate to minor variances and consents? It's that simple, and I just can't seem to get an answer, and I'm going to keep plugging until I try and get one.

Mr. Flynn: Mr. Chair, I think at the end of the day, the answer may be that we just disagree. If you were to carry that argument further, why would you not have one appeal body for, let's say, all the regions in the greater Toronto area? Or why wouldn't the regions of Peel and Halton have a single appeal body? And how soon before you carry that argument to its logical conclusion? Are you sending all appeals to an OMB again?

The idea, the principle, that's being established here—and you may or may not agree with it—is that where the initial decision is made, the appeal is also made and heard. It's that simple in my mind.

The Vice-Chair: Anything further?

Mr. Hardeman: Is there any staff available that could answer that?

The Vice-Chair: Mr. Sergio.

Mr. Sergio: Mr. Chair, during delegation we heard from—

Interjections.

The Vice-Chair: Excuse me. Mr. Sergio has the floor.

Mr. Sergio: We heard during from the delegations that local municipalities liked to have their own autonomy, their own power, they want to establish their own local bodies. The intent here is to give those municipalities exactly that.

I believe—and this is my view—that if two or three small local municipalities, because they are too small or have no staff or no engineering, no planning, whatever it may be, decide to get together and have one local appeal body, it may be that there is enough flexibility, or the minister, by regulation, may allow that. I'm not sure.

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Mr. Hardeman: Thank you very much, Mr. Parliamentary Assistant. That's really the question that I have. Again, maybe we can get the legal branch back. If that's possible, I support it. But my understanding and my argument for the last 10 minutes have been that that was not possible. And I want to know why it isn't made so that it is possible, because that's what my small communities want. They want to be able to have joint services.

The Vice-Chair: Mr. Sergio, please.

Mr. Sergio: He wants to get to a political answer, which I don't have, unfortunately.

Mr. Shachter?

Mr. Shachter: Just to clarify, as it turns out, actually, there isn't this ministerial authority in order to set something else in place. It really is set out in the act itself, all of the provisions, so that should a municipality decide for whatever reason—economy of scale—it's sufficiently sophisticated so that it has its up-to-date plans and zoning bylaws to set one up, it would be the local municipality. Conceivably, it could result in a circumstance where in one region you would have a number of different municipalities setting up their own local appeal bodies. But it is contemplated that the municipality who has the juris-

diction to hear the consent or the minor variance would be the municipality that would be able to establish the local appeal body on its own, not in conjunction with any of the other municipalities.

So the long answer to your short question is no. The authority to set up the local appeal body is in the legislation.

Mr. Hardeman: So again, going back, the parliamentary assistant suggested that if two municipalities, for economies of scale or so forth, jointly set one up, that seems to make some sense, that they could work together.

Mr. Sergio: I said they may out of this context here. Don't quote me.

Mr. Hardeman: Yes. Again, Oxford county is kind of near and dear to my heart. Because of the combined planning function, they have certain responsibilities at the local level, certain responsibilities at the upper tier, but the planning department is all one group. The director of planning and development is one person who does all the upper-tier and lower-tier planning function. If this amendment is passed, would they be allowed to have an appeals body that hears appeals for minor variances which are granted by the committee of adjustment at the local municipality and land division consents which are granted by the upper tier?

Mr. Shachter: No. And in some sense, just to be clear, this motion is a clarification with respect to the authority. In my review of this particular provision, it really is the clarification. It wasn't that Bill 51 previously provided the authority for what you are proposing to occur; it really just clarifies that it can only occur through the local municipality, not in conjunction with any other municipality.

Mr. Hardeman: Could you enlighten me, from a functional point of view, what would be the positive of having it that way, making sure it was clarified that we could not have shared appeal bodies?

Mr. Shachter: I think I can speak to the answer in a functional—from a legal clarification point of view in terms of what I'm guessing you might be asking for, which is the underlying policy rationale, I can't speak to that. In terms of the planning aspects of it, certainly we have planners here who could speak to their view on what such a body might look like. But certainly all that this motion is doing with respect to this particular aspect of this provision is making it clear that the local municipalities who have jurisdiction over either consents or minor variances would be in a position to establish a local appeal body. The same thing for an upper tier.

Does it mean that it could be a duplication, that you could have more than one local appeal body in one particular region? I think that that's correct. But as I said, I don't feel qualified to really speak to the underlying policy rationale with respect to this.

Mr. Hardeman: So your contention is that this is a clarification from the act as we heard it at committee. Is it your legal opinion, then, that under the act before the clarification, if Oxford decided to set up a local appeals

body that would hear appeals in Oxford county, that would be against the rules the way it was written?

Mr. Shachter: I think it wouldn't be the act. With Bill 51, as presently contemplated, one could potentially make an argument that what you're proposing could occur. The difficulty with the argument, as I've mentioned before, is that you run into the problem of jurisdiction. Right now, if you have a certain jurisdiction, whether it's local or upper tier, which has jurisdiction over either a consent or a minor variance type of application, by allowing the other municipality to take on that role, they'd be taking it on without the jurisdiction to even have dealt with it in the first place. So it is problematic as a result, and this is why the clarification is there, that there might be an argument that could arise.

The Vice-Chair: Mr. Rinaldi.

Mr. Rinaldi: If I may add, part of my riding, Northumberland county, is one of only two counties in the province of Ontario that doesn't have any upper-tier planning whatsoever. Ernie, just to address your issue, and I know where you're coming from, that's a decision that the local county council makes. For example, if Northumberland county wants to have an upper tier, that's a decision they make at the local level, and that would move the whole process up the scale. So to say that they make little side deals, that's a decision they make locally. It's Northumberland county and Dufferin county that made their own local decisions to not have upper-tier planning. They could have the option of having one board, I presume, if those counties decide to have upper-tier planning, but that's a decision that has to start locally. At least that's my interpretation.

Ms. MacLeod: With respect, Mr. Rinaldi, the way this is written, it's removing the option for regional co-operation; that is exactly what it's doing. You're removing the ability to share costs and share administration.

Mr. Rinaldi: If I may, if the county of Northumberland—they have the jurisdiction to do that—makes the decision to have upper-tier planning, it's a decision they make locally. Then they could form their board, I would think. But at the local level they don't want any part of that.

Mr. Hardeman: Again, I want to go back to the legalities of it, the jurisdictional problem we have that if the local decision is made, we need the local appeals body from the same jurisdiction to hear the appeal. It would seem to me that it would imply that there was a connection to it. In fact, I think some of my local constituents are going to see a bias, that the same people—again, the motion was defeated to have the minister appoint that appeals body in the local municipalities, so now they're going to be appointed by the local council, whose decision the committee is going to hear. I think the public is going to see some bias there, rather than having it going to another appeals body that isn't involved.

I guess my question really is, on the other side of it, from a legal perspective, what negative part is there to having a third party who is not connected to the municipi-

ality hearing appeals, as though it was the Ontario Municipal Board, only appointed at the local level and done much more economically, effectively and efficiently? Is there a function problem or a legal problem with having it go beyond the planning authority that's making the decision?

Mr. Shachter: I don't want to get into, again, the underlying planning rationale or the policy rationale for setting it up. But when you have a municipality that has set up a local appeal body—and I understand the concerns you've raised with respect to the perception of bias—the local appeal body is a tribunal. It is bound by all of the rules and laws that apply to tribunals in the hearing of matters. Should the tribunal not exercise its jurisdiction properly or not reach a decision in a proper manner, then an application could be made to court. So there are checks and balances with respect to the system as it exists today, and as it would exist should there be a local appeal body.

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You speak to having a third body. The difficulty I have is that what you would be doing is, instead of creating a local appeal body to hear local matters—so you'd be in some sense diverting appeals that would otherwise be going to the Ontario Municipal Board with respect to consents and minor variances—you'd be now adding an additional body. So you'd have local appeal bodies, you'd have an appeal body that I would presume would not be local and then you'd have an Ontario Municipal Board. I'm just not sure, having regard to the appropriate mechanism for a resolution of these matters, that that would be the way you might want to go.

Mr. Hardeman: We're getting closer to an answer here. Is it your legal opinion that as the bill is presently structured, the local appeal body would be obligated to be residents of the local municipality? Does it have to be that local, or could somebody from Toronto be appointed on an appeals body somewhere in the province?

Mr. Shachter: I apologize. I have to get my Bill 51. I haven't quite memorized it yet.

I just wanted to clarify that my understanding is that it is something that's going to be set out by regulation. I understand—and this isn't legal so I'm sort of putting on another hat—that the proposal for what would be included in such a regulation has been posted on the EBR.

Mr. Hardeman: So, in your opinion, the way the bill is presently written, the municipality can appoint?

Mr. Shachter: Subject to the regulation.

Mr. Hardeman: Is it presently in the bill that the municipality does the appointing?

Mr. Shachter: Yes.

Mr. Hardeman: But the regulation will define who would be eligible to be on the committee, so it is possible for the minister to say that they must all be local people?

Mr. Shachter: Without presuming what the minister would say, that's correct. The regulation could set out what the eligibility is as well as qualifications of the members of the local appeal body.

The Vice-Chair: Anything further? All right, we have subsection 6(1). All those in favour?

Mr. Hardeman: Recorded vote.

Ayes

Balkissoon, Flynn, Lalonde, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The motion is carried.

Page 14: This is a government motion.

Mr. Flynn: I move that subsection 6(2) of the bill be struck out.

The Vice-Chair: Any comments?

Mr. Prue: Could I ask for the rationale for doing so?

Mr. Sergio: It's a consequential motion for the purpose of deleting this section and it has been inserted in a new, renumbered section.

Mr. Prue: But does subsection 6(2) not deal with the city of Toronto?

Mr. Sergio: Yes, it does.

Mr. Prue: Can you tell me why the previous motion, number 13, said that it does not apply with respect to the city of Toronto, and now, in 14, it does? And it's all within the same section.

Mr. Sergio: It deals with the local appeal body, which does not apply to the city of Toronto. This gives it to the entire province.

Mr. Prue: As I understand the section—you tell me if I'm wrong—this is a provision respecting open houses, consultations, public meetings, and the notice will now apply to the city of Toronto. I don't really have any objection to it applying to the city of Toronto but I need to know the rationale why, in the previous government motion, subsection 8.1(24), "This section does not apply with respect to the city of Toronto," and in this motion it includes the city of Toronto where it didn't appear to before.

Mr. Sergio: I believe the City of Toronto Act does not include that.

Mr. Prue: It doesn't include the provision for public hearings?

Mr. Sergio: No, but if they want to establish it, they can. That may be part of the new City of Toronto Act.

Mr. Prue: It may be.

The Vice-Chair: Anything further on this motion?

Mr. Sergio: They have a committee of adjustment. They may change it.

The Vice-Chair: Okay. I'll call for the vote. All those in favour? Opposed? Carried.

Shall section 6, as amended, carry? All those in favour? Opposed? Carried.

Moving on to page 15, section 7. It's a PC motion.

Ms. MacLeod: I move that subsection 16(2) of the Planning Act, as set out in section 7 of the bill, be

amended by striking out "may contain" in the first line and substituting "shall contain."

This amendment is meant to eliminate the ambiguity of the section. It is felt that this change will eliminate an escape clause in a section where a great deal of work in terms of the official plan will be done.

The Vice-Chair: Any comments? All those in favour of this motion?

Ms. MacLeod: Recorded vote.

Ayes

MacLeod, Prue.

Nays

Balkissoon, Flynn, Lalonde, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Shall section 7 carry? All those in favour of section 7? Opposed? Carried.

Moving on to section 8, page 16. We have a government motion.

Mr. Balkissoon: I move that subsection 8(1) of the bill be amended by striking out "26(5)" and substituting "26(6)."

The Vice-Chair: Any comments on the motion?

Mr. Prue: What's it for? I wouldn't be asking all these questions if you'd just give a one- or two-sentence rationale.

Mr. Balkissoon: It's just a technical issue.

Mr. Sergio: It's a technical motion to reflect the renumbering with subsection 26(5)—

Mr. Prue: That's all you have to say. Thank you.

The Vice-Chair: Anything from Mr. Hardeman?

Mr. Sergio: It may not suffice for Mr. Hardeman.

Mr. Hardeman: Yes. I'm just wondering. Striking out subsection 26(5) and then replacing it with 26(6): What happens to 26(6)?

Mr. Sergio: It's being renumbered.

Mr. Hardeman: Oh, so it's renumbered. So there would be no 26(6) anymore?

Mr. Sergio: Yes.

The Vice-Chair: We'll call the vote. All those in favour? Opposed? The motion's carried.

Page 17, a government motion.

Mr. Rinaldi: I move that subsections 8(2), (3) and (4) of the bill be struck out and the following substituted:

"(2) Subsections 17(15) to (19) of the act are repealed and the following substituted:

"Consultation and public meeting

"(15) In the course of the preparation of a plan, the council shall ensure that,

"(a) the appropriate approval authority is consulted on the preparation of the plan and given an opportunity to review all supporting information and material and any other prescribed information and material, even if the plan is exempt from approval;

“(b) the prescribed public bodies are consulted on the preparation of the plan and given an opportunity to review all supporting information and material and any other prescribed information and material;

“(c) adequate information and material, including a copy of the current proposed plan, is made available to the public, in the prescribed manner, if any; and

“(d) at least one public meeting is held for the purpose of giving the public an opportunity to make representations in respect of the current proposed plan.

“Open house

“(16) If the plan is being revised under section 26 or amended in relation to a development permit system, the council shall ensure that at least one open house is held for the purpose of giving the public an opportunity to review and ask questions about the information and material made available under clause (15)(c).

“Notice

“(17) Notice of the public meeting required under clause (15)(d) and of the open house, if any, required under subsection (16) shall,

“(a) be given to the prescribed persons and public bodies, in the prescribed manner; and

“(b) be accompanied by the prescribed information.

“Timing of open house

“(18) If an open house is required under subsection (16), it shall be held no later than seven days before the public meeting required under clause (15)(d) is held.

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“Timing of public meeting

“(19) The public meeting required under clause (15)(d) shall be held no earlier than 20 days after the requirements for giving notice have been complied with.

“Information and material

“(19.1) The information and material referred to in clause (15)(c), including a copy of the current proposed plan, shall be made available to the public at least 20 days before the public meeting required under clause (15)(d) is held.

“Participation in public meeting

“(19.2) Every person who attends a public meeting required under clause (15)(d) shall be given an opportunity to make representations in respect of the current proposed plan.

“Alternative procedure

“(19.3) If an official plan sets out alternative measures for informing and obtaining the views of the public in respect of amendments that may be proposed for the plan and if the measures are complied with, subsections (15) to (19.2) do not apply to the proposed amendments, but subsections (19.4) and (19.6) do apply.

“Open house

“(19.4) If subsection (19.3) applies and the plan is being revised under section 26 or amended in relation to a development permit system,

“(a) the council shall ensure that at least one open house is held for the purpose of giving the public an opportunity to review and ask questions about the proposed amendments; and

“(b) if a public meeting is also held, the open house shall be held no later than seven days before the public meeting.

“Information

“(19.5) At a public meeting under clause (15)(d), the council shall ensure that information is made available to the public regarding who is entitled to appeal under subsections (24) and (36).

“Where alternative procedures followed

“(19.6) If subsection (19.3) applies, the information required under subsection (19.5) shall be made available to the public at a public meeting or in the manner set out in the official plan for informing and obtaining the views of the public in respect of the proposed amendments.”

The Vice-Chair: Any comments?

Mr. Prue: I have a question first and then I have a comment on a completely different aspect. I need to understand. This is a rather lengthy amendment. Is there a provision, or does the provision allow that there is both a public information meeting and a public meeting, or does it allow for the substitution of one over the other? Because in my reading of this, it appears that it may allow an open house for—how did I have this down? If there is a plan revision as required under section 26, the five-year review section, or in relation to the development permit system, then a public open house is held, but if the plan is being prepared for any other reason, then you have a public meeting. That’s how I read this. That means that you substitute an open house for a meeting?

Mr. Sergio: Yes. Indeed the local municipality has the option to hold either/or.

Mr. Prue: Well, you have an open house—I don’t mind having both, and very often in a planning process you have an open house so the public is acquainted with what is being proposed, and then you have a public meeting for them to comment on it. This would take away their right to comment on it.

Mr. Sergio: No.

Mr. Prue: Well, then, you’d have to have a public meeting as well. You just said that there wasn’t one.

Mr. Sergio: Yes, you would have a public meeting, of course, yes, but with respect to the open house, I think it’s a delegation again. Municipalities may say, “There may not be a need to have an open house; we just may have a public hearing.”

Mr. Prue: No, I understand that and I have no difficulty with that. What I want to ensure, because it’s not clarified to my mind in reading these sections, is that if there is an open house there must, in all cases, be a public meeting to follow.

Mr. Sergio: Yes, indeed.

Mr. Prue: So people can read this transcript in the future and know that there must be—okay. That was my question. But I do want to talk about another section.

The Vice-Chair: Okay. Mr. Hardeman?

Mr. Hardeman: Thank you very much. I wonder, in some of the areas—and I know it’s a very involved amendment and it goes at great length to describe what is required in the public involvement in the process. If you

take, on the second page, that the notice “shall ... be given to the prescribed persons and ... bodies, in the prescribed manner”—in other words, the municipality gets to prescribe who they’re going to let know and how they’re going to do that. To me, there’s some concern that if we need to tell them that they have to hold two meetings, at least, and they must do this and they must do that but they can set their own rules of how to do it, in fact the rules could say, “We don’t have to tell anybody except the ministry, and we don’t have to do any more than call them on the phone,” and they would meet the prescribed manner. In fact they could reduce public involvement by including that part about using the prescribed manner, rather than having the manner prescribed. Could you make a comment on that?

Mr. Sergio: I think municipalities are indeed required to notify the public. I don’t think they would leave the public out by saying, “We invite so and so in and not the public.” I think they are required to inform the public, to notify the public when they receive an application and to hold public meetings as well.

Mr. Hardeman: Just forget the person, then. If you look at the notice that’s required—“prescribed persons and public bodies”—does that mean the upper tier could leave out the lower tier for notification? Who would monitor that to make sure that the appropriate public bodies were prescribed so they would get proper notice?

Mr. Sergio: If you read the motion, it also says that “the council shall ensure that at least one open house is held for the purpose of giving the public an opportunity to review and ask questions about the proposed amendments.”

Mr. Hardeman: Yes, but when you go to section 17, on notice, it doesn’t go very broadly into how much of the public—the open house must be held, but there seems to be very little indication of who they have to notify that they’re holding it.

Mr. Sergio: I think the act here is suggesting and giving direction to the local municipalities. If the local municipality is a very small one, and they decide that they may want to notify the local people, I’m sure that they would be notifying everybody there, whoever is involved. They have the Municipal Act, the Planning Act, which calls for following a certain process, according to prescribed limits.

Mr. Hardeman: For further clarification, presently in the Planning Act, it says that everybody within 400 feet of the property must be notified. This seems to indicate that that would be eliminated.

Mr. Sergio: No, no.

Mr. Hardeman: This act no longer describes who has to be notified, just that it be in a prescribed manner.

Mr. Sergio: I think the local municipality decides who they’re going to be notifying, but I’m sure that there are rules and regulations, and the Planning Act will be very specific to deal with that.

Mr. Hardeman: The other question, on participating at a public meeting: Having been to a number of public meetings, it says, “Every person who attends a public

meeting required under clause (15)(d) shall be given an opportunity to make representations in respect of the current proposed plan.” You hold your public meeting and have your time set from 8 to 11; what if everyone has not yet spoken? Would this then obligate another meeting?

Mr. Sergio: Definitely, yes.

Mr. Hardeman: Anyone who comes away from the meeting and says, “I wasn’t heard,” would precipitate another meeting.

Mr. Sergio: No. If someone was not present, I don’t think the municipality would say, “We’re going to give you another meeting because you weren’t there.”

Mr. Hardeman: I’ve seen some meetings where they ended with less than, “Shall we adjourn? Has everyone spoken?” So my suggestion is, does that mean, automatically, if it’s a rowdy-type meeting, that they’re going to have to have another one because somebody walks away from that and says, “I wanted to speak, but the mayor adjourned it before I had an opportunity”?

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Mr. Sergio: Well, I think the local municipality may decide, “Yes, we’d like to hold another meeting.” I don’t see a problem there.

Mr. Hardeman: I hate to be argumentative, but the problem is that this law isn’t about what local municipalities are going to do on their own; this law is about what the province is going to demand they do. And that’s why I want to know what it demands that that they do. What’s the minimum standard they have to meet?

Mr. Sergio: That’s right. And they have called the meeting. They have duly called the meeting within the time allotted. Now, if somebody is going to miss that meeting which he was duly notified for, you can’t ask the municipality to call another meeting. But if the municipality wants to call another meeting, I don’t think this is going to hold a local municipality to hold another local meeting.

Mr. Hardeman: Using the explanation that the parliamentary assistant just gave me, I’d like to know the reason for (19.1). It’s quite explicit.

Mr. Sergio: It is quite explicit. So if all the information is provided to the general public at least 20 days before a public meeting, I’m sorry, I don’t see the—

Mr. Hardeman: “Every person who attends a public meeting required under clause (15)(d) shall be given”—not “may be given” or not—

The Vice-Chair: You’re under (19.2); is that correct?

Mr. Hardeman: Yes, (19.2).

The Vice-Chair: Okay. You did say “(19.1),” so that’s where we were somewhat confused.

Mr. Hardeman: Oh, (19.2). Sorry. “Shall be given an opportunity to make representations in respect of the current proposed plan.” Every person, not those who made appointments or those—so what I’m saying is, if we’ve got a thousand people in the room and they hold a meeting, that meeting, according to this law, would never end.

Mr. Sergio: Well, the prescribed meeting has been called. If they’re going to get 10 people or a thousand

people and the local municipality wants to give them an opportunity to follow with another meeting, I think that's quite proper. But I think this sets the minimum standard for municipalities to hold a public meeting.

Mr. Hardeman: This doesn't put it in the municipality's hands. It says that "every person" who's there must be given an opportunity to speak. That's what it says. And I want to know: If that's not the intent, why is it there?

Mr. Sergio: Mr. Chairman, I don't have an answer. The act prescribes the local municipality to call a public meeting. To follow with another meeting, I think a local municipality may or may not go that particular route, but I think they are doing what the act is calling the local municipality to do, and I think that's fine. The rest? We have no idea if 10 people or a thousand people are going to show up.

The Vice-Chair: Okay. We've had, certainly, debate on this. I'm sorry. Do you have an issue?

Mr. Prue: I have a question and then an issue.

The Vice-Chair: Okay, I'm sorry.

Mr. Prue: I'd like to deal with an issue that hasn't been asked about yet, and that is:

"Information

"(19.5) At a public meeting under clause (15)(d), the council shall ensure that information is made available to the public regarding who is entitled to appeal under subsections (24) and (36)."

Well, one need only look over to number 19, which is two motions from now, and it spells out exactly who those people are. It's people who "made oral submissions at a public meeting or written submissions to the council.

"2. The minister.

"3. The appropriate approval authority.

"4. In the case of a request to amend the plan, the person or public body that made the request."

Everyone else is not entitled to appeal. That's what your amendment here is doing. What is being done in this section is saying, "You were in the room, you made an oral submission. However, if you didn't get a chance to make an oral submission because the council cut you off, too bad. If you haven't made a written submission in advance, too bad. If you're not the minister, too bad. If you're not an elected person, too bad." I really have some difficulty with approving (19.5), because you give this information out, and I have even more difficulty with number 19.

As the bill is drafted, it really reduces public participation in the planning process. It reduces it in a way that it has never been reduced before. Those who launch the appeals to the OMB usually are people who have financial resources. They're usually the people who are self-interested and take the time to prepare for the application, but ordinary members of the public have very limited time and expertise. They have very limited resources, by and large, to review the applicant's material and to consult expert advice in advance of public meetings. They often trust their local councillors, their local mayors to do the right thing and oftentimes, unfortun-

ately, they are disappointed. They have to then try to launch appeals later. What this legislation is doing is forbidding them from doing so.

Now as a mayor—and as a local councillor before that, I witnessed the previous mayor—at the start of the hearing we advised people that if they did not make any statements, they "may"—not they "shall"—be prohibited from launching an appeal, but that would be left up to the Ontario Municipal Board.

What you're doing today is, you're saying you "shall" be prohibited from launching an appeal because you are not there, and the board has no jurisdiction. So what you're doing is, you are leaving out all of those ordinary people. Also, there's nothing here in the legislation that provides for any intervener funding. Even for those people who have the temerity, the unmitigated gall to stand up and oppose some big developer and his process, there's no intervener funding. You're not allowing for ordinary people to participate.

This whole thing is about cutting out the public. This section is an abomination because you're going to set it out right there in front of them that they are no longer entitled to be part of the process, and the later section is the worst one, section 19, where you outline who can be and who cannot be subject to the appeal.

I cannot support this. I think this whole thing, as drafted, is there to significantly limit the ability of the public to participate in appeals. It is something I cannot believe that this government is intent upon doing. If you want to comment, go ahead, but I cannot and I will not be supporting this motion, and I cannot and I will not support cutting the public out of appeals that they have had an unqualified right to participate in, or had the right to participate in with the consent of the Ontario Municipal Board, for the last 50 years.

The Vice-Chair: Mr. Lalonde did have a question.

Mr. Lalonde: I'd just like to make a clarification on this one, that 19.5 is very clear. We're not cutting out anyone.

Mr. Prue: You're advising who can and who cannot appeal.

Mr. Lalonde: At the present time the regulations are in place. The municipality has to advise anybody who's living within 400 feet of the area that the minor variance or the changes to occur are proposed; also anybody beside the 400 feet could make a presentation, either oral or in writing. It is there at the present time and—

Mr. Prue: This is talking about the right to appeal. This is not talking about the right to participate.

Mr. Lalonde: The right to appeal is the same.

Mr. Prue: No, it is not.

The Vice-Chair: Mr. Sergio.

Mr. Sergio: Just briefly. The member has the right to express his views with respect to this particular motion, but I'll tell you that the motion goes a long way in allowing individual people and groups to participate in the various debates and public hearings and follow the application. It is something that both local municipalities and organizations and even industry have been looking

for and have been asking to streamline the process. There are ample opportunities. As a matter of fact, this goes a long way to giving an opportunity to individuals to be heard.

Mr. Prue: But not to appeal. They can't appeal. Read section 19, who can appeal.

Mr. Sergio: Mr. Chairman, with all due respect, I think later on we may get into that, but at the present time, as he knows, being a former mayor and councillor, there are many times when either side can come in at the last second and make an appeal to a particular application. I think it is important to give everybody an opportunity beforehand to contribute either in writing or in person, make submissions, but this probably would eliminate someone coming at the last minute and saying, "I want to appeal." But at the same time, ample opportunities are given to individuals to make their views known.

Mr. Prue: If I could ask a question: Somebody is on vacation when the thing is held, has no idea it's taking place. Somebody's in the hospital and is unable to get there. They are now going to be barred. In the past, that was a reasonable thing that the Ontario Municipal Board could look at and could say, "We understand you were not around. We understand you were out of the country. We're going to hear your appeal." From the day you pass this, those people are barred.

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Mr. Sergio: I believe that the OMB would have discretion if—

Mr. Prue: They don't have it.

Mr. Sergio: If there is a situation where someone is stuck in the hospital or whatever, I believe that the OMB has discretion to receive information.

Mr. Prue: If you can show me the section, then I won't be so angry. Go ahead.

Mr. Sergio: I can call—

Mr. Prue: Call the staff. Show me the section where the OMB has that discretion.

Mr. Sergio: Yes, surely.

Could staff please confirm that?

The Vice-Chair: Can we get staff assistance?

Mr. Shachter: I apologize; I didn't get the question. I imagine it relates to the ability to appeal. I wonder if you could repeat the question so I can respond.

Mr. Prue: Yes, the question that I just asked, that the Ontario Municipal Board cannot hear appeals save and except the right of appeal is limited to the four people set out in the motion, which is number 19. It's limited to:

"1. A person or public body who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council." So if you didn't make either oral or written submissions, you're not included there.

"2. The minister." So if you're not the minister, you're not included.

"3. The appropriate approval authority," which would be the municipality. If you're not a member of council, you're not included there.

"4. In the case of a request to amend the plan, the person or public body that made the request." So if you're not one of those people, then you're excluded.

I posed two questions. People who are outside of the country and who may not have known it was happening or were not within the jurisdiction and somebody who was ill or in the hospital or otherwise could not attend, and the parliamentary assistant said the board could hear that. I want to know the section of your act that says that that option is available to the Ontario Municipal Board and that a person can get in, because I don't believe the OMB would have the discretion; I cannot find it.

Mr. Shachter: First of all, let me respond by confirming that that's correct. If somebody doesn't fall within one of those four categories, they do not have the right to appeal—as of right. They do, though, have the right to ask the Ontario Municipal Board to be made a party to the hearing.

Mr. Prue: But not an appellant.

Mr. Shachter: Not an appellant, but certainly for the purposes of a hearing, once one is a party to a hearing, it's inconsequential as to whether one is an appellant or not.

Mr. Hardeman: What if there is no hearing?

Mr. Shachter: If there is no hearing, then the individual does not have the ability to appeal; that's correct. But in some sense, the board at the present time, as you know, may dismiss if an individual did not make written submissions or oral submissions before council.

Mr. Prue: They may, but now it will be "shall."

Mr. Shachter: That's correct. But, as I said, the authority is still retained. I believe I just referenced page 23 of the motions—not to run ahead; my eye just caught it—that you could be a party. No, I apologize; I do have the wrong reference. But I am aware that you can ask to be made a party at the hearing if there are reasonable grounds to be made so. But, as was indicated, if there is no appeal, then there is no ability to make that request.

The Vice-Chair: Anything further?

Mr. Hardeman: I want to follow through a little bit, the same as the previous question, but going back to the participation at the public meeting, recognizing that the public meetings are the meetings held prior to the council meeting where the decision is made. So I go to the public meeting, and it goes on and on, and they don't give me the opportunity to speak because the time has run out. The suggestion of the parliamentary assistant is that council would then hold another public meeting because there are more people who want to be heard.

Mr. Sergio: No, I said they may. It's up to them.

Mr. Hardeman: Yes, but as I say, I'm going to make the assumption they don't hold another public meeting. So I am now a citizen who has not been heard. Because I wasn't heard at the public meeting, I will not be notified of the council meeting where they're going to make the decision, so I will also lose my right to appeal to the Ontario Municipal Board. So how is it that that doesn't take away my right to appeal? Explain that.

Mr. Sergio: You can make a written submission to the OMB. You can make a written submission to council and be heard when the application goes to council.

Mr. Hardeman: I didn't know when it's going to council because they didn't have me on the record at the public meeting so they don't know who was there, so I don't get notified anymore. I'm just told that I'm no longer involved, because I wasn't heard at the public meeting and they decided not to hold another public meeting.

The Vice-Chair: Mr. Flynn.

Mr. Flynn: Yes. I wonder if we could have our staff just define—I think we're confusing some terms here. There's a public meeting and a meeting that is held in public. There's a public meeting in the planning sense of the word as a formal meeting of a constituted council that has a statutory definition, and there's a public open house. Any local municipality that I'm aware of, either at the regional or the local level—if you appear at a public meeting before that council and ask to be listed as a delegation, that council will continue to meet until you are heard, and if it means that further meetings are scheduled into the future, then so be it. I have yet to hear of anywhere in Ontario that somebody has registered as a delegation at a public meeting before a council and has not had the opportunity to be heard.

The Vice-Chair: I think you were interested in some legal advice.

Mr. Shachter: Mr. Flynn's actually correct. With respect to the statutory public meeting, the legislation as proposed does require that anybody who attends does have the right to be heard. Should time run out at the public meeting, I would anticipate that what would have to happen is the meeting would be continued; the meeting would not be closed. The meeting would have to continue until all those who were requesting the opportunity to speak can be heard.

Mr. Prue: If I can ask another question: What about a mother who has a couple of kids that she's put with the babysitter, and she's number 15 on the list. At about 11:30 at night they get to number 10 and she finally has to leave. They deal with the balance of them, and the next day she comes back and said, "But I really had something important to say." They say, "Tough," and nobody appeals, and she wants to appeal and she can't.

Mr. Shachter: Not wishing to speculate, I did spend a number of years in a municipality and I know that the clerk in most cases will take a list of the names of all of the individuals who were there. The individual could speak to the clerk about being changed in the order of deputation and could make arrangements with the clerk to be called the next night. But as I said, it would be speculation. I do know from my background that matters such as that can be addressed in the context of the statutory public meeting.

Mr. Hardeman: I just want to carry on with Mr. Flynn's comments about the difference between a public meeting—and maybe we'll ask the legal branch to stay.

Maybe it's defined in the act, but I was always told that a public meeting is a meeting that is owned by the

public. It's not a council meeting allowing the public to speak; it's a meeting of the public. A public meeting is just that. It's not a council meeting; it's a public meeting. In my mind, I don't have to make an appointment to come and speak at a public meeting; I go to the public meeting and I'm heard.

I don't think this act, in this context, is implying that council must finish their agenda or come back for another meeting. It is a public meeting held for this purpose, and when all are heard who want to speak, you close the meeting. In fact, I don't see anything in here that requires any member of council to be present for the public meeting. Am I wrong?

Mr. Shachter: There are a number of different questions there, so let me try to respond to all of them.

I would suggest that a meeting of the public is actually something different than a public meeting, which is actually contemplated by—subsection 17(15) of the act says that you are required to hold a public meeting, and that's what everybody in jargon talks about. They call it the statutory public meeting.

Depending on the jurisdiction, it's either council that's going to hold it or, if I remember correctly, Toronto has empowered its planning committee to hold it, and council ratifies. But whatever it is, it is statutory-mandated by the Planning Act. There are no options as to whether to hold it or not.

The conduct of the public meeting outside of the requirements of the Planning Act would be something that would be covered by the Municipal Act and any procedural bylaw that a council would enact in order to deal with the hearing of deputations and other matters such as that.

Does that respond to all of the questions, or did I miss one?

Mr. Hardeman: I just want to clarify: Is there anything in the act that says that the statutory public meeting must have members of the decision-makers present?

Mr. Shachter: Does it—

Mr. Hardeman: Does it say that members of council must be present at the public meeting that's being held?

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Mr. Shachter: The Planning Act doesn't require that. Without getting out of my area of expertise, I recollect that it's a matter that would be dealt with under the Municipal Act and the procedural bylaw in terms of meetings of council, because as you will probably know, a meeting of council is actually a specific type of affair. It's not just a number of councillors getting together: It's mandated under the Municipal Act and it has the requirements for quorum. So you are correct: While the Planning Act does not have any requirement, those requirements are contained in the Municipal Act. Meeting requirements, such as statutory public meetings under the Planning Act and in addition to any other kinds of situations where meetings are required to be held, would be covered under the Municipal Act.

Mr. Hardeman: We're talking primarily here of reviewing or approving the official plan. It's quite an involved process and obviously there are quite a number of meetings held. The majority of meetings that I've been to concerning official plans do not have politicians there, or at least not in charge; they're being held by the planning staff to have public input into a public meeting reviewing the official plan. Would they cover the statutory requirement for this meeting we're talking about here?

Mr. Shachter: No. Meetings that are held to inform the public, at which planners are available to answer questions and the public can attend and see what's proposed, are not public meetings under the provisions of subsection 17(15).

Mr. Hardeman: The section you're referring to describes who shall be at the meeting and how it shall be—

Mr. Shachter: No, it doesn't. I'm sorry, I don't mean to belabour the point, but subsection 17(15) of the act says that municipalities are required to hold a public meeting. The form of the public meeting—who shall be in attendance, including councillors and the requirement for quorum—would be found in the Municipal Act. But you are aware, as you've indicated, that there are many circumstances where you have an official plan amendment—especially where you have a secondary plan, for example—and you anticipate a lot of interest from the public. What you will do is, in order to give that public as much information as early in the process as you can, hold information sessions. You may hold any number of them. They are not mandated under the Planning Act, although I do know, as a matter of best practice, that a lot of municipalities will hold them. What is mandated is what I call the statutory public meeting.

Does that assist?

The Vice-Chair: Thanks very much. We've certainly had debate on this. Let's call for the—

Mr. Prue: Recorded vote.

Ayes

Flynn, Lalonde, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: Carried.

Moving on to page 18, we have an NDP motion.

Mr. Prue: I believe it's probably redundant.

The Vice-Chair: Yes, I believe you're right.

Mr. Prue: I could read it out if you want, but I believe it's redundant considering what we've just done.

The Vice-Chair: Moving on to page 19; it's a government motion.

Mr. Rinaldi: I move that subsection 8(6) of the bill be struck out and the following substituted:

"(6) Subsection 17(24) of the act is repealed and the following substituted:

"Right to appeal

"(24) If the plan is exempt from approval, any of the following may, not later than 20 days after the day that the giving of notice under subsection (23) is completed, appeal all or part of the decision of council to adopt all or part of the plan to the municipal board by filing a notice of appeal with the clerk of the municipality:

"1. A person or public body who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council.

"2. The minister.

"3. The appropriate approval authority.

"4. In the case of a request to amend the plan, the person or public body that made the request.

"No appeal re second unit policies

"(24.1) Despite subsection (24), there is no appeal in respect of official plan policies adopted to permit the erecting, locating or use of two residential units in a detached house, semi-detached house or row house situated in an area where residential use, other than ancillary residential use, is permitted.

"Exception

"(24.2) Subsection (24.1) does not apply to an official plan or official plan amendment adopted in accordance with subsection 26(1)."

The Vice-Chair: Any comments?

Mr. Prue: I've already dealt with it, and I already think this is an abomination. Recorded vote, please.

The Vice-Chair: Okay, a call for a recorded vote.

Mr. Hardeman:

Mr. Hardeman: I'm a little concerned. A few years ago there was a great debate about second units, particularly within the city of Toronto. This seems to take away that debate and go back—I think it was the former New Democratic government that was doing it, but I stand to be corrected—to allowing it as a right. This seems to imply that that's what we're doing now: allowing second units as a right in residential areas. Is that a reasonable assumption that I'm making in this amendment?

Mr. Sergio: Yes.

Mr. Hardeman: I know we've heard a lot, in the previous committee hearings and in this one, that we've done consultations with municipalities, but was there any consultation done with the people who are going to be affected by this as to whether this is the right or the wrong thing to do?

Mr. Sergio: I believe that consultation has taken place, but you have to remember that these are all permitted where local municipalities allow those extra units.

Mr. Hardeman: Yes, but that's my real problem, because the last time this issue was a big issue, the province was telling the municipalities that second units would be a right in any residential area. The public was very concerned about that. They said, "That shouldn't be a right; that should be something that varied in different communities." Some communities were suited to it; some were not. The municipalities said, "Okay, then the province shouldn't force it upon us," but the public said, "The

municipality shouldn't be able to force it upon us either." Now it says that you're taking the right to appeal away from the residents, so now municipalities get to make the final decision and no one can appeal that anywhere else. I want to know whether there was any consultation done within the residential community as to how that will impact the residential community in—at that time the argument was particularly from Toronto, but it's true in my community too. There were a lot of areas where the residents believe there's a problem with a second unit as a right.

Mr. Sergio: I'm sorry; I thought you were just commenting.

Mr. Hardeman: No, and I just wanted to know what type of consultation was done with the public who are going to be affected by this.

Mr. Sergio: I'm really not aware. Staff would—

The Vice-Chair: Please state your name for Hansard.

Mr. Ken Petersen: Ken Petersen, Ministry of Municipal Affairs and Housing, provincial planning and environmental services branch.

We had comprehensive consultation that led up to the proposed reforms in the bill. This was something that did come up from a number of stakeholder groups, that something like this was required in order to provide for some affordable housing. This, in particular, does put councils in the driver's seat, though, because as part of their official plan they would need to put it in. The provision is saying that, in the event that the municipality decides to put these policies into their official plan—and of course, as a normal course of events, they always do the consultation and that sort of thing—those policies would not be subject to appeal.

Mr. Hardeman: When you spoke of the consultations with a number of stakeholders, were they primarily the stakeholders as it relates to the Municipal Affairs and Housing portfolio, or where they the general public who made presentations?

Mr. Petersen: As part of our broad consultation we went across Ontario, so we met with a broad variety of groups. To say that everybody would support this I think is probably not correct; certainly there was a mix of opinions. But certainly, a number of municipalities and groups that support affordable housing were saying that something like this was required.

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The Vice-Chair: Okay, thank you very much.

We will call the vote. Was this a recorded—

Mr. Prue: Yes, I asked for a recorded vote.

Ayes

Flynn, Lalonde, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The motion is carried.

Going on to page 20, I believe this is another one like 18; it's not required. This is an NDP motion.

Mr. Prue: I'm not sure. On a technicality, maybe in large part, but I noticed that the motion in number 19 was, "Subsection 17(24) of the act is repealed and the following substituted...." This one is dealing with subsection 17(24.1). I'm not sure—it's a technicality—whether or not the previous one actually did cover this.

Interjection.

The Vice-Chair: It did cover it.

Mr. Prue: It did. Well, I'm just asking the question, because it is marginally different. But if legislative counsel says it did, then I accept that.

The Vice-Chair: We carry on. Thank you.

Next is page 21. We have a government motion.

Mr. Lalonde: I move that subsection 8(8) of the bill be struck out and the following substituted:

"(8) Subsection 17(36) of the act is repealed and the following substituted:

"Appeal to OMB

"(36) Any of the following may, not later than 20 days after the day that the giving of notice under subsection (35) is completed, appeal all or part of the decision of the approval authority to the municipal board by filing a notice of appeal with the approval authority:

"1. A person or public body who, before the plan was adopted, made oral submissions at a public meeting or written submissions to the council.

"2. The minister.

"3. In the case of a request to amend the plan, the person or public body that made the request.

"No appeal re second unit policies

"(36.1) Despite subsection (36), there is no appeal in respect of the approval of official plan policies adopted to permit the erecting, locating or use of two residential units in a detached house, semi-detached house or row house situated in an area where residential use, other than ancillary residential use, is permitted.

"Exception

"(36.2) Subsection (36.1) does not apply to an official plan or official plan amendment adopted in accordance with subsection 26(1)."

The Vice-Chair: Any comments?

Mr. Hardeman: Could I get an explanation for it as it relates to this one and the one we previously passed?

Mr. Sergio: I think that in this one here, if you have made an oral submission or a written submission, then you have a right to an appeal.

The Vice-Chair: Any further comments?

Mr. Hardeman: If the municipality is considering the second unit, and you have objected to it while they were considering it, you do have a right to appeal that, then?

Mr. Sergio: It deals with where the official plan is not exempt from approval. If you have not made an oral presentation at a public meeting or a written submission to council before a decision was made, then you wouldn't have a right to an appeal.

Mr. Hardeman: You have no right to appeal in the previous section for second units, and now this is giving someone the right to appeal?

Mr. Sergio: No. It would restrict the ability of those public bodies that could appeal an official plan where the official plan is not exempt from approval, without making an oral presentation at a public meeting or written submission to the council before council's decision, to only the Minister of Municipal Affairs and Housing.

The Vice-Chair: No further comments? We will have the vote. All those in favour? Opposed? The motion is carried.

Page 22, an NDP motion, and I believe it's the same situation that we had before.

Mr. Prue: I don't see any way around it. I keep trying to stop them and they keep voting me first.

The Vice-Chair: Next we have page 23, a government motion.

Mr. Flynn: I move that subsection 8(9) of the bill be struck out and the following substituted:

"(9) Section 17 of the act is amended by adding the following subsections:

"Restriction re adding parties

"(44.1) Despite subsection (44), in the case of an appeal under subsection (24) or (36), only the following may be added as parties:

"1. A person or public body who satisfies one of the conditions set out in subsection (44.2).

"2. The minister.

"3. The appropriate approval authority.

"Same

"(44.2) The conditions mentioned in paragraph 1 of subsection (44.1) are:

"1. Before the plan was adopted, the person or public body made oral submissions at a public meeting or written submissions to the council.

"2. The municipal board is of the opinion that there are reasonable grounds to add the person or public body as a party.

"New evidence at hearing

"(44.3) This subsection applies if information and material that is presented at the hearing of an appeal under subsection (24) or (36) was not provided to the municipality before the council made the decision that is the subject of the appeal.

"Same

"(44.4) When subsection (44.3) applies, the municipal board may, on its own initiative or on a motion by the municipality or any party, consider whether the information and material could have materially affected the council's decision, and if the board determines that it could have done so, it shall not be admitted into evidence until subsection (44.5) has been complied with and the prescribed time period has elapsed.

"Notice to council

"(44.5) The municipal board shall notify the council that it is being given an opportunity to,

"(a) reconsider its decision in light of the information and material; and

"(b) make a written recommendation to the board.

"Council's recommendation

"(44.6) The municipal board shall have regard to the council's recommendation if it is received within the time period referred to in subsection (44.4), and may but is not required to do so if it is received afterwards.

"Conflict with SPPA

"(44.7) Subsections (44.1) to (44.6) apply despite the Statutory Powers Procedure Act."

The Vice-Chair: Thank you. Any comments?

Mr. Hardeman: The problem I have is that the amendment is kind of convoluted. It's all nice words but—we'll start from the bottom up.

"Council's recommendation": The municipal board sends it back. Now remember, the municipal board in this amendment is obligated to look at the new information and make a judgment if in their opinion council would have made a different decision if they had had that information. They decide that the information is sufficient and is of the type of information that should have directed council to make a different decision, so they send it back. Council then, of course, is somewhat directed by the Ontario Municipal Board to change their mind, because the only reason they're being asked to review it is because the OMB has already decided that that information would likely have generated a different decision.

Then it comes back to the Ontario Municipal Board. Before, they had to "have regard to" the municipal decision, but the second time over they don't have to even do that. They may, but they don't have to. So if the council doesn't decide to change their mind, then the OMB doesn't have to take their position into consideration anymore. They can just carry on as they had originally decided, which was that this information is enough to change their mind. Am I wrong?

1230

Mr. Sergio: If I may, Mr. Chairman, I think that prior to, the OMB was requested to have regard to. The second time, when the application comes back from council again, they have to consider—not have regard to, but consider—council's decision, instead of having regard to.

Mr. Flynn: If I could add to that, just to Mr. Hardeman's point specifically, as I was reading that, it stood out. The wording is quite specific where it says "and the information and material could have materially affected," not "would have." So the choice is still council's as to whether it would have changed their opinion on that. That's what the board is seeking: a recommendation as to whether the new material that the board thinks could have—not would have—would have changed council's mind. So it's not being asked to reconsider or change its mind.

Mr. Hardeman: I stand to be corrected, but it would seem to me, if you were a member of the Ontario Municipal Board and you make a decision that this new information could very well have changed their mind, that means you have decided, as a member, that it would have convinced you to change your mind.

Mr. Flynn: No, but the wording is “could,” not “would.” The wording is very specific; it’s “could.”

Mr. Hardeman: No, that’s what I say: If they think it could have, then personally they believe it would have. But if it doesn’t, that means they’re not making the right decision. So all of a sudden, the OMB gets to make the decision.

The Vice-Chair: Mr. Prue.

Mr. Prue: I hate to beat a dead horse, but I have to. Again, this is limiting the rights of ordinary people. If you look at it, it’s limited right down. These are ordinary people who often will not have an opportunity. Who will have an opportunity in every single case is the development industry. It was in fact the development industry that came before this body and lauded, oh, just thought this was the greatest thing. It seems to me that you’ve fallen into their trap. They want to be able to push these things through. They don’t want people coming out and appealing. They don’t want people who find out after the fact, if they’ve kept it somewhat hidden, to be able to do anything about it.

Quite clearly, residents become aware of many of the council decisions when they read about them in the local newspaper. I have to tell you, and all of you who have been on local councils know, you get calls after the fact: “We didn’t know that this was going on. We didn’t see the ad in the *Globe and Mail* because we don’t get the *Globe and Mail*,” or “We didn’t get the ad in the local whatever because we just didn’t see it, but we did see the newspaper article that appeared a week later.” All of a sudden they seem, and they are, very interested and have knowledge and have things they want to say. These people are going to be cut right out.

Who also is going to be cut out are groups that are not within the 400 feet perimeter, people who may have a very keen interest. It may be an environmental interest. It may be an interest in terms of the planning process, in terms of business opportunities. It might be a whole bunch of stuff. They would not necessarily be informed. They wouldn’t get a letter to the effect. They may not see the ad in the newspaper, but they may see it a week or so later. Their entire submissions are going to be left out under this process.

Now I do see that there is something in there, and I’m not sure exactly how it works. If the municipal board is of the opinion that there are reasonable grounds to add the person or public body as a party, but that’s going to be very hard. They’re going to have to answer a whole bunch of questions why they didn’t turn up. They’re going to have to answer a whole bunch of questions what their submission was, whether it’s a valid submission, whether it could make a difference. That’s a really hard thing to overcome.

It seems to me that if you are truly interested in what the public and the local people have to say and not just what the developers have to say on these issues, because that’s what this is coming down to, then you have to change what you’re doing. It’s probably too late because you’ve already voted for it three or four times in a row

and you’re going to vote for it again, but in some cases you have to decide which side you’re on. I think that the public, in all cases, is right in the end. They have the right to be heard. They have the right to be consulted. They should have the right to appeal. They should have the right of a citizen to oppose any development at any stage which they think is detrimental to themselves or their community.

Again, I cannot support what you’re doing. I cannot support it because all of you who have been involved in the process know how important it is to get the public onside if you are making changes to their neighbourhoods, changes to their municipalities, changes to their lifestyle or changes to how they earn a living. That’s what’s being done here. It seems to me only the developers are going to be heard in the future, and maybe that’s the way you want it.

Mr. Sergio: I think we must not confuse two things here. The new, major information that is being provided, that the OMB sends back to council to make a decision—what the proposed legislation does now is bring the process upfront and deals with all those issues prior to. We have seen that individual groups have plenty of opportunities. This deals with new information that is being supplied. Where council has made a decision, it goes to the OMB. There is new information. The application is sent back, and then council says to the OMB, “Don’t just look. Consider what we have decided based on the new information.” I think it has nothing to do with cutting off anybody from public hearings at any particular time. That has already been dealt with upfront during the planning process.

Mr. Hardeman: I agree with my colleague Mr. Prue on the problem of people not being properly notified because they didn’t get the full communications that some of us avail ourselves of. But this amendment really goes beyond that, for me. This is about the information that is presented after the appeal goes to the Ontario Municipal Board. We’re going to make the assumption that the person who is appealing has the right to appeal. It hasn’t been taken away from them for this purpose. They are making the appeal and we’re talking about the information being provided and the OMB sending it back to council to make a decision before it goes back to them.

There are two things I wanted to clear up. The development did not come in saying that they didn’t support putting more information. They were very adamant that they were concerned with the ability of some people to present new information and others not presenting new information. That was their concern, not their support. What they were supportive of was to limit the number of instances where people, at the last minute, could come in and put forward an appeal or be involved in the appeal process when they hadn’t really brought their position forward during the process.

They were also very concerned that the OMB was allowed to then accept information, which all parties were not able to do, and the OMB could then decide to hear more information that was presented by one party or

a public body, that the applicant was not necessarily allowed to present and in fact is prohibited from presenting new information in support of the application.

I have concern that the process by when new information—the OMB, first of all, gets to decide whether they accept the new information, and then they get to decide whether in their mind the new information would have an impact on the decision council had made. Then, if they believe it did, they can send it back to council and council can send it back to them to make their final decision. It would seem to me that at this point, when they've made those first two decisions, rather than send it back to council and go through that whole rigmarole, why would they not just make the decision, since that's where the end decision is going to be made anyway? I think this is one area where it's going to prolong the process as opposed to shortening it, as everyone who presented to us was looking to happen.

Mr. Sergio: Just quickly, it's not that we're jumping ahead of ourselves a bit, but later on we will be dealing with what constitutes a complete application, the information required and stuff like that. I think some of those comments will be addressed later on.

Mr. Hardeman: I thank the parliamentary assistant for that. Some of those things will be helpful. But I think this process of sending an application back and forth, when we know that in the end the OMB is going to make the final decision, is a redundant process that's going to lengthen it and make it more expensive for everyone involved and have a tendency to bog down the OMB.

1240

Mr. Sergio: It's important to realize that this new information is not being provided solely by the developer, let's say. It could be a particular group that has good, new, serious information that council should be made aware of, and I think that's where it comes in. So if the information is of a nature that council will be taking into consideration and will be making a subsequent decision and then it goes again to the OMB, then I think that's a fair process for both individual groups and developers. Then, of course, the OMB will make a final decision.

The Vice-Chair: Thank you. I'll call the vote. All those in favour? Opposed? The motion is carried.

Moving on, we have page 24. I believe that the 24, 25 and 26 motions, certainly with the passing of this last one, 23, are not needed in our work here.

Mr. Prue: I think they're needed; I just think they're redundant.

The Vice-Chair: They're not needed in this process. I'm talking about the process.

Mr. Prue: All right.

Mr. Hardeman: I have a question to the legislative staff. The words "striking out 'other than a public body'"—the amended form still includes the words "other than a public body," doesn't it?

Or does it? I never looked. The Chair is so efficient, I haven't had the chance to check it all out.

Ms. Mifsud: It's changed slightly now, if you look at 17(44.1). It's a person or public body who satisfies one

of the conditions set out in subsection (44.2), so it's a little more complicated than it was before.

Mr. Hardeman: So we can't do it just that way?

Ms. Mifsud: No. It doesn't work.

The Vice-Chair: Moving on to page 27, a government motion.

Mr. Rinaldi: I move that section 8 of the bill be amended by adding the following subsection:

"(9.1) Subsection 17(45) of the act is amended by striking out 'on its own motion or on the motion of any party' in the portion before clause (a) and substituting 'on its own initiative or on the motion of any party.'"

The Vice-Chair: We have the motion. Any comments?

Mr. Hardeman: Could we get an explanation for it?

Mr. Sergio: It's a technical motion to make clear that the Ontario Municipal Board can act on its own or by a motion from another party to dismiss a hearing.

Mr. Prue: I don't think the board can make a motion on itself—that's the problem with what they wrote the first time.

Mr. Sergio: They don't use that very often.

Mr. Prue: Oh, they don't?

Mr. Hardeman: It's a technical thing.

The Vice-Chair: All those in favour? Opposed? The motion's carried.

Page 28. This is a government motion.

Mr. Lalonde: I move that section 8 of the bill be amended by adding the following subsections:

"(11.1) Section 17 of the act is amended by adding the following subsection:

"Same

"(45.1) Despite the Statutory Powers Procedure Act and subsection (44), the municipal board may, on its own initiative or on the motion of the municipality, the appropriate approval authority or the minister, dismiss all or part of an appeal without holding a hearing if, in the board's opinion, the application to which the appeal relates is substantially different from the application that was before council at the time of its decision."

"(11.2) Subsection 17 (46.1) of the act is repealed and the following substituted:

"Dismissal

"(46.1) Despite the Statutory Powers Procedure Act, the municipal board may dismiss all or part of an appeal after holding a hearing or without holding a hearing on the motion under subsection (45) or (45.1), as it considers appropriate."

The Vice-Chair: Any comments on this?

Mr. Hardeman: I've noticed that a couple of the amendments have had, "Despite the Statutory Powers Procedure Act...." What is it in this amendment that the Statutory Powers Procedure Act demands we do that this resolution is eliminating?

Mr. Sergio: This clears one very important aspect: It would allow the Ontario Municipal Board to dismiss an appeal of an application that was substantially different than what a council has considered. I guess this would bring an end to those applicants' applications coming in

at the last moment and going directly to the OMB, applications considerably different than what council had considered before.

Mr. Hardeman: Hard as it is to believe, I understood that part of it. I just want to know why it starts off by saying, “Despite the Statutory Powers Procedure Act.” I want to know what in that act says that they couldn’t do this without it being in spite of that. Why is that in there?

Mr. Sergio: Would our legal expert answer that?

Mr. Hardeman: The reason I bring it up—I think it’s very important, while the legal branch is coming up—is that when you put that up front, it means that there is some right that people had before this bill came before us.

Mr. Sergio: I think it’s a technical reference to the Statutory Powers Procedure Act, but we’ll let Mr. Shachter—

The Vice-Chair: There seems to be some difficulty with “despite” and “in spite,” so if you could clarify.

Mr. Hardeman: I believe I have some rights that this is going to take away from me.

Mr. Sergio: Okay. Let’s hear.

Mr. Shachter: Currently, under the Statutory Powers Procedure Act, if the parties consent, a proceeding can be disposed of by a tribunal’s decision without a hearing. It goes on to say, “unless another act says otherwise.” Because the Planning Act contemplates that decisions can be made by the board to dismiss an appeal without a hearing, it has to trump the Statutory Powers Procedure Act in that respect. That’s why it says, “despite the act.”

Mr. Prue: I have a question; I’m not sure who would answer. The word “substantial” bothers me a little, because we’ve all seen, I know, a developer come forward with a 20-storey apartment building and then come to the board and say, “I only want a 15-storey.” It’s still an apartment building; it’s still on the same footing. Is that “substantial”? What’s the definition of “substantial”? Is the board left to determine that in every case, or is lopping five storeys off an apartment building not considered substantial and it would proceed?

Mr. Shachter: I think, Mr. Prue, you’re correct in your question: It will be for the board to determine in every individual case. As more of these circumstances come before the board, you’ll have a body of case law develop that sets out the factors one would have to consider as to, “What does ‘substantial’ mean?”

Mr. Prue: At this point, we would just have to leave it open, much as local committees of adjustment look at the factors: Is this minor variance in the public interest? They’ve got this idea in their head what constitutes—

Mr. Shachter: In the same way that you’ve got the four tests for minor variances, and those are set in the statute, you’d have the test developing for, “What is ‘substantial’?” As you know, in this type of motion, you’d have the parties arguing before the board as to whether it is or isn’t substantial. That’s correct.

Mr. Sergio: I think it’s fair to add, Mr. Chair, that we’ve dealt with that portion of a major application change, if you will, where council has not made a deci-

sion and the applicant brings that major change directly to the OMB. I think it’s important that it goes back to council, that the OMB sends back that application to council, because council has not dealt yet with that particular portion of the application, regardless of how it may be, if it’s 20 storeys or 15 storeys.

Mr. Prue: I understand all that, and I agree with all that. I’m just trying to get my head around “substantial.” What it is, we don’t know, but we’ll find out in eight or 10 years when there’s a good body of evidence.

Mr. Shachter: I don’t want to presume as to what the board will or will not do in that respect, as to whether 15 storeys instead of 20 constitutes “substantial,” or mixed use over just commercial constitutes “substantial.” It will have to develop as the cases come before the board.

1250

Mr. Hardeman: On the same topic, the definition of “substantial”: You mentioned that case law, the number of cases, will solve that for us, and eventually we will see, based on the OMB decisions, what the OMB considers substantial.

You mentioned minor variances. In all my time in minor variances, after all the OMB decisions on minor variances, I have never yet found an OMB decision that actually defines what a minor variance is. What is minor? Is it 100 feet? Is it one foot? Because every one is different. Why would we assume that “substantial” is going to be better defined than “minor variance”? No one seems to know what is minor and what isn’t.

Mr. Shachter: To my understanding, over a number of years, the board has developed a series of factors as to what the four tests mean under a minor variance application. You are right: The board has said in many cases that “minor” is not necessarily a number. Because the board isn’t a court and because, as you know, decisions don’t bind future panels, these in some sense end up being—I hate to use the term “guidelines,” but these will guide future panels of the board in determining how the tests are met. So I would say that in fact there is a level of clarity with respect to whether a proposed minor variance would meet the four tests in one case or not.

The Vice-Chair: Thank you to legal counsel.

We have a vote on this. All those in favour? Opposed? Carried.

Shall section 8, as amended, carry? All those in favour? Opposed? Carried.

I think we’ll recess at this time. We will be back at 2 p.m. I wish you a good lunch.

The committee recessed from 1255 to 1402.

The Vice-Chair: Welcome back. I’d like to call the afternoon session to order. Before the recess, we were just entering section 9. I do not see any amendments to section 9. Is there anything on section 9 from anyone? If not, shall section 9 carry? Carried.

Section 10: We have a government motion on page 29. Mr. Flynn.

Mr. Flynn: I move that subsection 22(3) of the Planning Act, as set out in subsection 10(3) of the bill, be

amended by striking out “an open house and public meeting” and substituting “a public meeting.”

Mr. Prue: Is that 29?

Mr. Flynn: No, this is 30.

Interjections.

The Vice-Chair: We're on number 29.

Mr. Flynn: Oh, I'm sorry. You're right. I thought we had dealt with it. Let me try that again. Actually, when you hear this one you'll probably understand why.

The Vice-Chair: Carry on.

Mr. Flynn: I move that subsections 10(1) and (2) of the bill be struck out and the following substituted:

“(1) Clause 22(1)(a) of the act is amended by striking out ‘under subsection (4)’ and substituting ‘under subsections (4) and (5), if any.’

“(2) Clause 22(2)(a) of the act is amended by striking out ‘under subsection (4)’ and substituting ‘under subsections (4) and (5), if any.’”

The Vice-Chair: Any discussion? Mr. Prue.

Mr. Prue: What does it mean? I'm sure you're asking the same question.

Mr. Sergio: I can respond to that.

Mr. Hardeman: That's my question too. It sounds like a very formal amendment, but I don't know what it does.

Mr. Sergio: We dealt earlier with another motion to remove the requirement for a mandatory public open house, and this motion maintains that policy intent. Also, the motion will ensure that in addition to material already required, any complete application material defined in the local official plan is forwarded to the appropriate authority as well. That's what it does.

The Vice-Chair: Anything further on that? If not, I shall call the vote. All those in favour? Opposed? The motion is carried.

Page 30: This is a government motion.

Ms. Jennifer F. Mossop (Stoney Creek): I move that subsection 22(3) of the Planning Act, as set out in subsection 10(3) of the bill, be amended by striking out “an open house and public meeting” and substituting “a public meeting.”

The Vice-Chair: Thank you. Any discussion?

Mr. Hardeman: Yes. I wondered if we could find out why we want to strike out “an open house.”

Mr. Sergio: This is a technical motion. We dealt with it already.

Mr. Hardeman: As I read it, it's technical but it says that we're going to replace “an open house and a public meeting” with “a public meeting.” So in fact we are eliminating the open house.

Mr. Sergio: I think “public open house” is not public meetings.

Ms. Mossop: But an open house could be just a little less prescriptive.

The Vice-Chair: Anything further?

Ms. Mossop: I was just saying it's a little less prescriptive. It keeps it more general. An open house could be part of a public meeting.

Mr. Hardeman: I guess my concern is the word “and”—“an open house and public meeting,” and then we substitute “public meeting,” which is only half of what was required before.

Mr. Sergio: The bill proposes that subsection 22(3) of the Planning Act provides that an open house and a public meeting are not required for an official plan amendment application if council refuses to adopt the proposed amendment.

Mr. Hardeman: An open house and a public meeting are not required—

Mr. Sergio: If council refuses to adopt the proposed amendment.

Mr. Prue: How does council know before it holds the open house and public meeting that it's going to refuse to adopt it? Are they going to look at it and say, “We're not going to adopt this”?

Mr. Hardeman: It's starting to get cloudy here. I guess it goes on with that. The public meetings and open houses are held before council makes a decision in the process. We don't wait to hear from the public until after the decision has been made. So when you don't hold one, I don't know how you would know that council is not going to adopt the amendment, so why would they not hold the meeting?

Mr. Sergio: In previous motions I believe we dealt with if council decides to hold an open house. Not on every application is it mandatory that the local municipality is going to hold an open house. We heard from small municipalities, where they said, “We don't want to have an open house.” They may do away with it.

Mr. Hardeman: My concern is, if council gets to decide when they do or do not hold an open house, then why are we talking about open houses at all? They always have had the ability to hold one if they want one, and if this doesn't mandate that they have to hold one, why are we talking about them?

Mr. Sergio: That's why this is a technical motion which removes the reference to the mandatory open house. If they want it, they hold one.

Mr. Hardeman: This isn't what this motion says. This motion says to strike out the words “an open house and public meeting” and replace them with “a public meeting.” So they're still saying the same thing about the public meeting. Then, when you go back to the act, it says that you don't have to hold an open house or a public meeting.

Mr. Sergio: That's exactly why. It is not mandatory. We'll leave it up to the local municipalities.

1410

Mr. Hardeman: If they don't pass the amendment.

Mr. Sergio: That's right.

Mr. Hardeman: But we have the sequence wrong. They don't know whether they're going to pass the amendment until after they've held whatever meetings they're going to hold.

Mr. Sergio: But it's still up to the local municipality if they want to hold an open house or not.

Mr. Hardeman: Let's forget the open house for a moment and go to just the public meeting. When would they decide that they're not holding a public meeting? This deals with—after they've decided they're not going to approve the amendment, then they don't have to hold a public meeting. Well, I would hope that they've already done it.

The Vice-Chair: Mr. Flynn?

Mr. Flynn: I was going to ask if Mr. Sergio or staff could perhaps explain for the benefit of all of us the requirements that municipalities have right now to hold public open houses and public meetings for certain types of applications, whether they be official plan amendments, zoning reviews, that type of thing. Each one, as I understand it, has a different type of criterion assigned to it. It may be good for us all to understand the existing situation and what this would change it to.

Mr. Shachter: Currently, the Planning Act says that despite the requirement to hold an open house, if council is going to refuse an application, then they may do so. You will know that in the bill there was a requirement that there be an open house and a public meeting. Because the open house requirement is now being deleted so that it only applies in those situations when there's a five-year review or development permit system review, then the requirement is no longer needed to make reference to that open house.

You had talked about the sequence of matters occurring. While I understand what you're saying, that you would expect a council to hold an open house—and they do have the authority to—they're not required to because the Planning Act currently provides that despite that requirement, if they're going to refuse, they don't have to hold the statutory public meeting. Does that assist in terms of understanding the sequence?

Mr. Hardeman: I understand the sequence and I appreciate removing the open house reference. I guess my question really comes from Mr. Prue's question. How would council know they were going to refuse the application if they haven't even held a public meeting? Would that mandatory public meeting not be held prior to council's decision?

Mr. Shachter: Pursuant to the provisions of the Planning Act currently, it's not necessarily a requirement. Council could make the decision based, for example, on staff's planning report, that the proposal is so inappropriate that it wouldn't even be necessary to hold a statutory public meeting before making the decision. So you could get information in other ways, other than just from the public.

Mr. Hardeman: If that were to happen—I find that a bit of a stretch, that council would review the application and the planning report before they held a public meeting. But if they did that, who would have the right to appeal the decision?

Mr. Shachter: Whoever in the Planning Act would have the right to appeal a council refusal. For example, the proponent would be able to; the minister conceivably could; an approval authority could.

Mr. Hardeman: So it could get to the Ontario Municipal Board under an appeal without ever having gone to the public.

Mr. Shachter: In that situation, it's conceivable that it could.

The Vice-Chair: Mr. Lalonde, you had a question?

Mr. Lalonde: I have a question just for clarification, again. Any request for amendment has to come up in front of the municipal council.

Mr. Shachter: That's correct.

Mr. Lalonde: Even if it is rejected, it has to come up at a public meeting.

Mr. Shachter: That's correct but it doesn't have to—

Mr. Lalonde: So it will be on the agenda.

Mr. Shachter: It has to come up on the agenda and it does have to come before council for its consideration; that's correct. But it doesn't have to necessarily come up at the statutory public meeting under subsection 17(15).

Mr. Lalonde: Exactly. But let's say a person comes in and he wants an amendment to the official plan for a 15-storey building and we find out that the fire department only has equipment to cover up to 10 storeys and the municipal council will reject it. Could the demandeur, the person who is asking for the amendment, appeal that to the local appeal board?

Mr. Shachter: Well, you wouldn't be able to appeal it to the local appeal board unless it was a consent or a minor variance. For example, if it was an official plan amendment or a zoning bylaw amendment, it could go to an appeal body; it could go to the Ontario Municipal Board.

Mr. Lalonde: That's it. Okay. I have the answer.

The Vice-Chair: Okay. Mr. Prue.

Mr. Prue: I remember once, when I was on council before I was the mayor, a similar situation. Somebody wanted to have a body transfer station in an ordinary house on a street in East York. The council, in its wisdom, unanimously said, "We're not even holding a public meeting. This is ridiculous."

I want to ask, if such a situation were to happen, and the gentleman or the person with the body transfer house was successful in appealing to the Ontario Municipal Board and no one was heard, how would the neighbours be able to influence that decision before the board since there were no deputants? How would they get standing?

Mr. Shachter: Meaning, under the current situation that's—

Mr. Prue: Under this situation that's unfolding here today. There were no deputants, therefore no one made any submissions; no one put any written arguments in. In this scenario that happened in East York all those years ago, how would any of those neighbours or people be able to have standing before the board to talk about having a body transfer station in the house next door to them?

Mr. Shachter: They would be able to participate in the hearing in one of two ways. If they had concerns, they could be asked to be made participants, and then they'd be able to come forward, give evidence and speak

to the various issues relating to the impact of the body transfer station in their neighbourhood. In addition, they could also ask to be made parties to the hearing.

You will remember from earlier that one of the bases upon which the board can grant party status is if there are reasonable grounds to do so. Without wishing to comment on whether that would constitute reasonable grounds or not, certainly that would be something that the board could take into account in determining whether they want to become a party or not.

Mr. Prue: Okay. But the people would not have an unqualified right to attend against such a thing, the municipal council having usurped the public process.

Mr. Shachter: I don't want to comment on whether the process has been usurped or not—I'm not really here to comment on that—but in terms of how they could participate in the process, certainly that would be the mechanism that I've laid out earlier.

Mr. Prue: Okay. Thank you.

The Vice-Chair: Mr. Hardeman.

Mr. Hardeman: Again, going back to making a decision without holding the public meeting, am I wrong, then, that if they decided to do that because it was such a frivolous or outlandish transfer station-type idea that planning staff presumed council would not approve it, so they take it to the council? They have to turn it down, so they have the same process, but in fact, under the law, you would be prohibiting council from making a positive decision. Is that right? They couldn't make a positive decision because they haven't held a public meeting.

Mr. Shachter: I think we have to remember, though, that the provisions provide currently that it "despite" that provision. So council could make a refusal without having to hold the public meeting, and it could be based on, as I said before, a staff report, for example, that might be a negative staff report.

Mr. Hardeman: But they couldn't make a positive decision without that public meeting.

Mr. Shachter: I think that's probably correct. That's right, in order to be able to decide rather than just a refusal.

Mr. Hardeman: So we have a hearing set up, and people would come to this meeting, but council does not have the ability legally to make a "yes" decision. Is that right? Because they haven't held a public meeting, so they can't make a positive decision.

Mr. Shachter: That's correct. Subsection 17(15) does require you to hold that public meeting before you make a decision. So it doesn't say before you make a positive decision, but it's before you make any decision with respect to the application that's before them.

Mr. Hardeman: So if you bring it before council without the public meeting, the only alternative, if we pass this amendment, is to say no. If they say yes, they must go back and hold a public meeting first.

Mr. Shachter: Except that currently the Planning Act outside of Bill 51 provides for that today. So what's being contemplated, I understand, does not change the current situation. It has always been contemplated. The

Planning Act, as far back as I can remember, has said that if a council is going to refuse, they then don't have to go through that whole public meeting process. So that's what exists today. What's being contemplated does not change that.

1420

Mr. Hardeman: The previous government with the previous act was as silly as we are here today.

Mr. Shachter: I can't comment.

The Vice-Chair: Thank you for your counsel. I think we've had a good debate on this. I'll put the question: All those in favour? Opposed? The motion is carried.

Next, moving on to page 31, we have a PC motion.

Mr. Hardeman: I move that the subsection 10(4) of the bill be amended by adding the following provision between subsections 22(5) and 22(6) of the Planning Act:

"Regulations

"(5.1) The Minister may make regulations,

"(a) determining what constitutes a completed application for the purposes of this section; and

"(b) requiring that a pre-consultation process be established for the purposes of this section and setting out standards and rules for the carrying out of the pre-consultation process."

The Vice-Chair: Thank you. Any comments, discussion? No comments on this? I'll call the vote.

All in favour? Opposed? The motion is defeated.

Interjections.

Ms. MacLeod: If I could just hear—

The Vice-Chair: Okay. Those opposed—I'm sorry. Those in favour of the motion?

Interjection.

The Vice-Chair: Right, I did see.

Those opposed? I did see.

Interjections.

The Vice-Chair: It was clear to me. It's lost.

Next we have page 32, a government motion, Mr. Rinaldi.

Mr. Rinaldi: I move that clause 22(6)(b) of the Planning Act, as set out in subsection 10(4) of the bill, be amended by striking out "clauses (7)(c) and (d)" and substituting "paragraphs 1 and 2 of subsection (7.0.2)".

The Vice-Chair: Okay, thank you. Any comments?

Mr. Prue: I'd just like to hear what it's about.

Mr. Sergio: It's a technical motion.

The Vice-Chair: A technical motion. Okay, we've heard the motion.

Those in favour? Those opposed? Carried.

Page 33, a government motion, Mr. Lalonde.

Mr. Lalonde: I move that subsection 22(6.1) of the Planning Act, as set out in subsection 10(4) of the bill, be struck out and the following substituted:

"Response re completeness of request

"(6.1) Within 30 days after the person or public body that requests the amendment pays any fee under section 69, the council or planning board shall notify the person or public body that the information and material required under subsections (4) and (5), if any, have been provided, or that they have not been provided, as the case may be.

“Motion re dispute

“(6.1.1) Within 30 days after a negative notice is given under subsection (6.1), the person or public body or the council or planning board may make a motion for directions to have the municipal board determine,

“(a) whether the information and material have in fact been provided; or

“(b) whether a requirement made under subsection (5) is reasonable.

“Same

“(6.1.2) If the council or planning board does not give any notice under subsection (6.1), the person or public body may make a motion under subsection (6.1.1) at any time after the 30-day period described in subsection (6.1) has elapsed.

“Notice of particulars and public access

“(6.1.3) Within 15 days after the council or planning board gives an affirmative notice under subsection (6.1), or within 15 days after the municipal board advises the clerk of its affirmative decision under subsection (6.1.1), as the case may be, the council or planning board shall,

“(a) give the prescribed persons and public bodies, in the prescribed manner, notice of the request for amendment, accompanied by the prescribed information; and

“(b) make the information and material provided under subsections (4) and (5) available to the public.”

The Vice-Chair: Any comments?

Ms. MacLeod: I want to congratulate the member opposite for getting all that out. I thought that was great. It was a long one.

Mr. Lalonde: I'll read it in French.

The Vice-Chair: No comments? Mr. Prue.

Mr. Prue: I'm trying to understand the rationale, because it appears to me that this is something the developers have requested, who think that the councils are then going to request studies and additional information, and they don't want to provide it. Is that what this is for: to speed up the application and keep the developers happy? Is that what the regulation is about?

Mr. Sergio: I think this was addressed by a number of delegations on both sides. We were dealing earlier this morning with something similar with respect to timing and completeness of applications. I think it was Mr. Hardeman getting into that particular discussion. This addresses the fact that council has to make a decision whether an application that has been received is complete or incomplete within a prescribed time, which here is 30 days, and they have to respond to it in 15 days if it is indeed a complete application. So this deals with the documentation which is being brought to the local municipalities and the timing within which council has to make a decision.

Mr. Prue: But it's only the person or public body that made the application that can do this process. So in effect it's only the developer or the person seeking the change that can force the speed-up of the process. It's not somebody opposing it who can speed up the process or slow down the process; it's only the applicant. So surely

this is for the developers. I don't see anybody else whom it could possibly be for.

Mr. Sergio: I think it works both ways.

Mr. Prue: How?

Mr. Sergio: It's up to the local municipality to say whether they have indeed received all the documentation with respect to an application or not. It could be a minor application and all the documentation should be—a major application may have leverage and have other information provided later on, but I think this is forcing the local municipality to make a decision and say, “Yes, the application is complete and it can go ahead.” If it's not complete, then within 15 days after that, they have to make a decision on whether they need more material or not.

The Vice-Chair: Mr. Hardeman.

Mr. Hardeman: I have some concerns about the definitive dates and the timelines on this. I agree with Mr. Prue that this isn't going to speed up the process. What it's doing to the municipalities here is making sure that they have the review completed within the 30 days from the time they apply, because if they haven't, when they do their review and decide they need more information, they can't request it any more because they had said it was a complete application.

Having said that, I agree with the parliamentary assistant that we had a lot of presenters who came forward and said, “You have to have a process in place that puts a deadline on what the municipality can be asking for.” There were some presentations that talked about how the municipality would review it for 60 days and then come back and say, “But we need another study.” They'd go and do that and then later, rather than make a decision, they would want more information. So you need a deadline, but I'm concerned that if you put that 30-day time frame in this amendment, a lot of municipalities are going to have trouble actually even realizing what a complete application will be in this case. It could be quite an involved application where more information is needed on studies and so forth before they can properly deal with it. I'm not sure that this will leave it open enough for municipalities to be able to do that.

1430

Mr. Sergio: I think this deals with two aspects. It is giving local municipalities 30 days to deal with the material they have received, to make a decision if that is enough to call it a complete application or not and, I think, to maybe close the door for developer applicants, if you will, to come and give bits and pieces of information. So I think this works both ways. But within 30 days I think council should respond and say, “Yes, we do,” or “We don't have sufficient information to make this a complete application.”

The Vice-Chair: Mr. Lalonde.

Mr. Lalonde: I think this is a very, very good amendment. I remember that the previous government passed a bill because some municipalities were really dragging their feet, taking six and eight months before passing an amendment. I've seen that many times. The previous

government passed a bill that municipalities now are eligible or allowed to hire a private planner to review the application to make sure that everything meets the municipality's requirements.

Mr. Hardeman: Just one further question on the process after the 30 days and the request for the OMB to decide what a completed application will be in this case: Is this a similar process—maybe we need the legal branch to give us this—as we talked about earlier, that the OMB, as a third party, would actually make a decision on what a complete application is, as opposed to actually hearing the application?

Mr. Sergio: The way I read it, if council fails to make a decision to respond within the 15 days, then the OMB could be making that decision.

Mr. Hardeman: But the decision would be strictly based on whether it is or isn't a complete application, not on the merits of the application. Is that right?

Mr. Sergio: Yes.

The Vice-Chair: Okay. We've had a debate. All in favour of the motion? Those opposed? Carried.

Next we have page 34, a government motion.

Mr. Flynn: This is a consequential amendment to the previous item, I think.

I move that subsection 22(6.2) of the act, as set out in subsection 10(4) of the bill, be amended by striking out "subsection (6.1)" and substituting "subsection (6.1.1)."

The Vice-Chair: Any comments? All in favour? Opposed? Carried.

Page 35, government motion.

Ms. Mossop: I move that subsection 10(5) of the bill be struck out and the following substituted:

"(5) Subsection 22(7) of the act is repealed and the following substituted:

"Appeal to OMB

"(7) When a person or public body requests an amendment to the official plan of a municipality or planning board, any of the following may appeal to the municipal board in respect of all or any part of the requested amendment, by filing a notice of appeal with the clerk of the municipality or the secretary-treasurer of the planning board, if one of the conditions set out in subsection (7.0.2) is met:

"1. The person or public body that requested the amendment.

"2. The minister.

"3. The appropriate approval authority.

"Consolidated Hearings Act

"(7.0.1) Despite the Consolidated Hearings Act, the proponent of an undertaking shall not give notice to the hearings registrar under subsection 3(1) of that act in respect of an amendment requested under subsection (1) or (2) unless,

"(a) one of the conditions set out in subsection (7.0.2) is met;

"(b) if the plan is exempt from approval, the requested amendment has been adopted under subsection 17(22);

"(c) the approval authority makes a decision under subsection 17(34); or

"(d) the time period referred to in subsection 17(40) has expired.

"Conditions

"(7.0.2) The conditions referred to in subsections (7) and (7.0.1) are:

"1. The council or the planning board fails to adopt the requested amendment within 180 days after the day the request is received.

"2. A planning board recommends a requested amendment for adoption and the council or the majority of the councils fails to adopt the requested amendment within 180 days after the day the request is received.

"3. A council, a majority of the councils or a planning board refuses to adopt the requested amendment.

"4. A planning board refuses to approve a requested amendment under subsection 18(1).

"Time for appeal

"(7.0.3) A notice of appeal under paragraph 3 or 4 of subsection (7.0.2) shall be filed no later than 20 days after the day that the giving of notice under subsection (6.3) is completed."

The Vice-Chair: Any comments?

Mr. Hardeman: I just wanted to hear the comments from the other side, since I haven't got the act right here in front of me. What's the intent of this? I notice a lot of timelines in it. I understood we were going to get away from timelines specifically—forcing municipalities to adhere to a certain tight timeline.

Mr. Sergio: I think this differs a bit from a particular time. I think this would ensure, indeed, that council and the public would have an opportunity to review the application prior to giving the opportunity to an appealing body to make an appeal. In other words, there's no more such a thing that an applicant can go to the Ontario Municipal Board prior to having public hearings and having council have an opportunity to deal with the application.

The Vice-Chair: Any further comments? If not, I'll call the vote. All those in favour? Those opposed? Carried.

Page 36: a government motion.

Mr. Rinaldi: I move that subsections 22(7.1) and (7.2) of the Planning Act, as set out in subsection 10(6) of the bill, be struck out and the following substituted:

"Appeals restricted re certain amendments

"(7.1) Despite subsection (7) and subsections 16(36) and (40), there is no appeal in respect of,

"(a) a refusal or failure to adopt an amendment described in subsection (7.2); or

"(b) a refusal or failure to approve an amendment described in subsection (7.2).

"Application of subs. (7.1)

"(7.2) Subsection (7.1) applies in respect of amendments requested under subsection (1) or (2) that propose to,

"(a) alter all or any part of the boundary of an area of settlement in a municipality;

"(b) establish a new area of settlement in a municipality; or

“(c) amend or revoke official plan policies that are adopted to permit the erecting, locating or use of two residential units in a detached house, semi-detached house or row house situated in an area where residential use, other than ancillary residential use, is permitted.

“Same

“(7.2.1) If the official plan contains policies dealing with the removal of land from areas of employment, subsection (7.1) also applies in respect of amendments requested under subsection (1) or (2) that propose to remove any land from an area of employment, even if other land is proposed to be added.”

The Vice-Chair: Any comments?

Mr. Prue: It was just technical, and I may have heard it wrong; I just want to make sure that the record is properly reflected. I believe there was a misspoken word: “16” was used in lieu of “17” in one of the sentences. I just want to make sure that if and when the act is passed, it doesn’t have that misspoken edition.

The Chair: Sorry, I missed it.

Mr. Hardeman: He said 16(36) instead of 17(36).

Mr. Prue: Yes. I believe it’s under “Appeals restricted re certain amendments.”

The Vice-Chair: Where it says “subsections 17(36)”?

Mr. Prue: Yes, 17(36). What was said was “16(36),” and if that’s part of the official record, I think it ought not to be.

The Vice-Chair: It has now been clarified: 17(36).

All in favour of the motion? Opposed? The motion is carried.

Number 37, a PC motion: I believe it was already covered in the last one.

Moving on to page 38: This is a government motion.

1440

Mr. Lalonde: I move that subsection 10(7) of the bill be struck out and replaced by the following:

“(7) Subsections 22(9.2) and (9.3) of the act are repealed and the following substituted:

“Appeals withdrawn, amendment

“(9.2) If all appeals under subsection (7) brought in accordance with paragraph 1 or 2 of subsection (7.0.2) in respect of all or any part of the requested amendment are withdrawn within 15 days after the date that the most recent notice of appeal was filed, the council or planning board may, unless there are any outstanding appeals, proceed to give notice of the public meeting to be held under subsection 17(15) or adopt or refuse to adopt the requested amendment, as the case may be.

“Decision final

“(9.3) If all appeals under subsection (7) brought in accordance with paragraph 3 or 4 of subsection (7.0.2) in respect of all or any part of the requested amendment are withdrawn within 15 days after the last day for filing a notice of appeal, the decision of the council or planning board is final on the day that the last outstanding appeal has been withdrawn.”

The Vice-Chair: Thank you. Any discussion? All in favour? Opposed? Carried.

Page 39. Government motion. Mr. Flynn.

Mr. Flynn: I move that subsection 10(8) of the bill be struck out and the following substituted:

“(8) Subsection 22(11) of the act is repealed and the following substituted:

“Application

“(11) Subsections 17(44) to (44.7), (45), (45.1), (46), (46.1), (49), (50) and (50.1) apply with necessary modifications to a requested official plan amendment under this section, except that subsections 17(44.1) to (44.7) and (45.1) do not apply to an appeal under subsection (7) of this section, brought in accordance with paragraph 1 or 2 of subsection (7.0.2).

“(9) Subsection 22(12) of the act is amended by striking out ‘appeals under clause (7)(c) or (d)’ and substituting ‘appeals under subsection (7) brought in accordance with paragraph 1 or 2 of subsection (7.0.2)’.

“(10) Subsection 22(13) of the act is amended by striking out ‘appeals under clause (7) (e) or (f)’ and substituting ‘appeals under subsection (7) brought in accordance with paragraph 3 or 4 of subsection (7.0.2).’”

The Vice-Chair: Thank you. Any comments? I’ll call the vote. All those in favour? Those opposed? Carried.

That brings us to the end of section 10. Shall section 10, as amended, carry? All in favour? Opposed? Carried.

Section 11: I see no amendments. Any discussion on section 11? If not, shall section 11 carry? Those in favour? Opposed? Okay.

Section 12, page 40: We have a government motion. Ms. Mossop.

Ms. Mossop: I move that section 26 of the Planning Act, as set out in section 12 of the bill, be struck out and the following substituted:

“Updating official plan

“26. (1) If an official plan is in effect in a municipality, the council of the municipality that adopted the official plan shall, not less frequently than every five years after the plan comes into effect as an official plan or after that part of a plan comes into effect as a part of an official plan, if the only outstanding appeals relate to those parts of the plan that propose to specifically designate land uses,

“(a) revise the official plan as required to ensure that it,

“(i) conforms with provincial plans or does not conflict with them, as the case may be,

“(ii) has regard to the matters of provincial interest listed in section 2, and

“(iii) is consistent with policy statements issued under subsection 3(1); and

“(b) revise the official plan, if it contains policies dealing with areas of employment, including, without limitation, the designation of areas of employment in the official plan and policies dealing with the removal of land from areas of employment, to ensure that those policies are confirmed or amended.

“Effect of provincial plan conformity exercise

“(2) For greater certainty, the council revises the official plan under subsection (1) if it,

“(a) amends the official plan, in accordance with another act, to conform with a provincial plan; and

“(b) in the course of making amendments under clause (a), complies with clauses (1)(a) and (b) and with all the procedural requirements of this section.

“Consultation and special meeting

“(3) Before revising the official plan under subsection (1), the council shall,

“(a) consult with the approval authority and with the prescribed public bodies with respect to the revisions that may be required; and

“(b) hold a special meeting of council, open to the public, to discuss the revisions that may be required.

“Notice

“(4) Notice of every special meeting to be held under clause (3)(b) shall be published at least once a week in each of two separate weeks, and the last publication shall take place at least 30 days before the date of the meeting.

“Public participation

“(5) The council shall have regard to any written submissions about what revisions may be required and shall give any person who attends the special meeting an opportunity to be heard on that subject.

“No exemption from approval

“(6) An order under subsection 17(9) does not apply to an amendment made under subsection (1).

“Declaration

“(7) Each time it revises the official plan under subsection (1), the council shall, by resolution, declare to the approval authority that the official plan meets the requirements of subclauses (1)(a)(i), (ii) and (iii).

“Direction by approval authority

“(8) Despite subsection (1), the approval authority may, at any time, direct the council of a municipality to undertake a revision of all or part of any official plan in effect in the municipality and when so directed the council shall cause the revision to be undertaken without undue delay.

“Updating zoning bylaws

“(9) No later than three years after a revision under subsection (1) or (8) comes into effect, the council of the municipality shall amend all zoning bylaws that are in effect in the municipality to ensure that they conform with the official plan.

“Minister may request amendment to zoning bylaw

“(10) The minister may, if he or she is of the opinion that a zoning bylaw in effect in the municipality does not conform with the official plan as revised under subsection (1) or (8), request the council of the municipality to pass an amendment to the zoning bylaw to achieve conformity.”

The Vice-Chair: Any comments?

Mr. Hardeman: I have three questions on it. It's a rather lengthy amendment. I was starting to think that maybe the government had decided to rewrite the act during the clause-by-clause process. We're getting close.

First of all, on the first part of the page that my colleague read:

“(ii) has regard to the matters of provincial interest listed in section 2, and

“(iii) is consistent with policy statements issued under subsection 3(1)....”

What is the difference between those two? What's the difference between the matters? It would seem to me that policy statements are of provincial interest—

Mr. Sergio: That's right; provincial policy statements.

Mr. Hardeman: Yes, but what are matters that are just of provincial interest but are not policy statements? I have some problems that that would open it up to a great number—all of a sudden the province could say, “The policy statements don't matter. You haven't thought about these things here. We have an interest in building a courthouse in the centre of your town and you haven't given that any consideration at all.” That wouldn't be part of a policy statement. I'm wondering what is covering off that isn't part of a policy statement.

Mr. Sergio: Without going to legal staff, let me attempt to answer your question. For example, when the minister says, “We give you five years for a new official plan and three years for zoning bylaws,” and stuff like that, if they fail to do that, I think the minister can come in and make sure that indeed they bring their zoning bylaws within the three-year time limit. That would be one area.

Mr. Hardeman: Is that an item that's in section 2?

Mr. Sergio: Mr. Hardeman, this deals with some previous questions you had on previous motions here with respect to time—five years, three-year amendments—and as well, the employment lands. Okay?

1450

Mr. Hardeman: Yes, but if I could just carry on. This section deals with revising the official plan.

Mr. Sergio: Yes, in five years.

Mr. Hardeman: And then as they revise the official plan, these are things they must do: “(i) conforms with provincial plans,” which makes good sense, “or does not conflict with them, as the case may be, (ii) has regard to the matters of provincial interest listed in section 2, and (iii) is consistent with” provincial “policy statements....” What is the difference of being consistent with provincial policy statements—why would they not be consistent with matters of provincial interest? Isn't a statement the statement of provincial interest?

I guess I need to know why because it's quite significant. The two terms, “have regard for” and “be consistent with”—I don't think there's anything in the planning process that's had more debate.

Mr. Sergio: To me, they are both the same, but we'll get a legal opinion.

Mr. Hardeman: I'd like to know why we have both here and what the issues would be.

The Vice-Chair: Mr. Prue, did you have—

Mr. Prue: Yes, but I believe he was about to get an answer.

The Vice-Chair: Oh, I'm sorry. I was sidetracked.

Interjections.

The Vice-Chair: Legal counsel.

Mr. Shachter: I understand, Chair, that the question related to the difference in the two tests that were set out and the revision of the official plan. As you will know, section 2 of the Planning Act sets out matters of provincial interest to which the minister, local boards and municipalities are to have regard. That is a test that is set out in section 2. Section 2 sets out the broad general matters of provincial interest; for example, things like the minimization of waste, orderly development of safe and healthy communities—the broad issues, the broad matters.

Section 3 is the section through which the provincial policy statement implements those matters of provincial interest. As you know, section 3, in that section, requires that decisions that are made are to be consistent with the provincial policy statement. So they are intended to be two discrete tests which people who are making decisions have to consider.

Mr. Hardeman: Thank you. The second one was on the consultation and special meeting, and it goes back to the discussion we had this morning about a public meeting. I find it interesting that (b) in subsection (3) is “hold a special meeting of council open to the public....” Would that meeting be appropriate to be the mandatory meeting for an official plan amendment or a bylaw change?

Mr. Sergio: Yes.

Mr. Hardeman: I think this was my argument this morning about the difference between a public meeting and a meeting of council that the public is invited to.

The Vice-Chair: Please identify yourself.

Mr. Ron Glenn: Ron Glenn, provincial planning and environmental services, Ministry of Municipal Affairs and Housing.

Currently in the Planning Act there is a requirement for council to hold a special meeting to consider revisions to the official plan. This is that same special meeting. In addition, if it's a five-year review—if you remember earlier from this morning—it's required to hold a mandatory public open house and a mandatory public meeting. So really there are three opportunities for the public to be engaged.

Mr. Hardeman: But this wouldn't be the mandatory public meeting?

Mr. Glenn: No.

Mr. Hardeman: Thank you. That's what I needed.

The last one is number (8): “Despite subsection (1), the approval authority may, at any time, direct the council of a municipality to undertake a revision of all or part of any official plan in effect in the municipality and when so directed the council shall cause the revision to be undertaken without undue delay.” Could you tell me who that applies to? Who in the province requires official plan approval authority?

Mr. Sergio: Local municipalities.

Mr. Hardeman: All local municipalities?

Mr. Sergio: Yes.

Mr. Hardeman: They all require this. So what this is saying is that the minister can, at any point in time, ask anyone to do an official plan review?

Mr. Sergio: Not ask anyone, but may direct local municipalities, if they have not conformed to the provincial policies. If they are zoning bylaws or the five-year planning revisions, the minister can request that it be done.

Mr. Hardeman: So you're suggesting that the approval authority referred to here is the province for everyone?

Mr. Sergio: I don't get your question. I'm sorry. What do you mean?

Mr. Hardeman: It's quite clear: “Despite subsection (1), the approval authority may, at any time, direct the council of a municipality to undertake a revision of all or part of any official plan in effect in the municipality and when so directed the council shall cause the revision to be undertaken without undue delay.” It doesn't talk about whether it meets guidelines or anything. It just says that the approval authority can tell anyone with an official plan to have a revision.

Mr. Sergio: But I believe that subsection (1) here says, “If an official plan is in effect in a municipality, the council of the municipality that adopted the official plan shall, not less frequently than every five years after the plan comes into effect....” If they don't do that, that's when the minister may step in.

Mr. Hardeman: But the headline of (8) is “Direction by approval authority.” Who is the approval authority?

Mr. Sergio: Let's get staff. He will clarify it for you.

Mr. Petersen: In most cases it would be the minister that is responsible for the approval of an official plan, but in some cases that responsibility will have been delegated, for instance, to an upper-tier municipality or what have you. So this really reflects a current provision in the Planning Act, which basically provides approval authorities with this ability.

Mr. Hardeman: Could you tell me what percentage of the province, when it comes to upper-tier municipalities, has local approval authority and which ones the minister has the authority for? I'm a little concerned as to how broad this is, how many municipalities the minister can obligate to review the plan at his command after this act is passed.

Mr. Petersen: I don't know what the exact number is, to be perfectly honest, but the minister could make this request, or the approval authority that has that responsibility for approving the lower-tier official plans. So some of that responsibility is at the upper-tier level. In terms of percentage, I just don't have that figure right off the top of my head.

Mr. Hardeman: To the parliamentary assistant, I have some concerns. We have the provision in here, and we had some discussion about it at committee, about the automatic review of the official plans in five years. This section here would imply to me that in those areas where the minister has the approval authority, he could actually come out and say he wants it all done in the next six months, and they would be obligated to do it. There's no condition here as to what is required for him to ask for the review. He can just tell them to review it.

Mr. Sergio: I don't think he can just come within six months and force it. I think it's giving very clear direction to the local municipality to comply within the five-year period, and three years hence, but I don't see the six months.

Mr. Hardeman: I guess that's where we're getting to the technicality of it. It says, "Despite subsection (1)"—and subsection (1) is the one that says when the review must take place—"the approval authority," which in this case is the minister, "may, at any time, direct the council of a municipality to undertake a revision of all or part of any official plan in effect in the municipality and when so directed the council shall cause the revision to be undertaken without undue delay."

Mr. Petersen: Just to reiterate, perhaps, if this creates some clarity, there is an existing provision in the act right now that does exactly this, so this provision is in the act. It is restated in this particular section because it was rewritten, but the provision is in the Planning Act right now.

Mr. Hardeman: So this amendment is replacing a part of the Planning Act that's already there?

Mr. Petersen: That's right. It was done for the sake of making sure that everything kind of flowed together in a proper format.

Mr. Sergio: I think Mayor McCallion was quite happy with this amendment.

Mr. Hardeman: All is well that ends well.

The Vice-Chair: Thank you for your help.

Mr. Sergio: I should have said that before.

The Vice-Chair: Okay, we've had debate on this.

Mr. Prue: I still have my question.

The Vice-Chair: My apologies. Mr. Prue.

Mr. Prue: On the last page, subsection (9), "Updating zoning bylaws," you have left this in; this has not changed: "No later than three years after a revision under subsection (1) or (8) comes into effect, the council of the municipality shall amend all zoning bylaws that are in effect in the municipality to ensure that they conform with the official plan."

We had deputations from both Mississauga and particularly from Toronto, because poor Toronto, nine years after amalgamation, still has not consolidated all of their zoning bylaws. When they were asked whether or not it was possible within three years under this provision to comply with the plan, they said, "Definitely not," and they gave six or seven years as a minimum time to be able to comply. May I ask why you did not listen to that deputation?

1500

Mr. Sergio: As far as I remember, I was here as well. While I remember the city of Toronto saying, "Yes, six years would be better than five," I think most municipalities said, "We are quite happy with the five years." As a matter of fact—

Mr. Prue: It's three.

Mr. Sergio: Three years—some questions were asked. I remember very well we asked some questions: "Can you do it within three years?" They said, "No problem."

Mr. Prue: Some said that, but we have the largest municipality in Ontario saying it cannot, and Mississauga also said they could not and would prefer a longer period of time.

Mr. Sergio: I think Hazel said she was happy with it.

Mr. Prue: I think Hazel did not. But my question is, why are you going with the three years when you obviously have some of the largest municipalities in Ontario who quite simply cannot comply? And those were only two that came here. I would question whether Hamilton, which was forcibly amalgamated, and Ottawa, which has the same exact problems, can comply with this legislation. You're forcing this, and we're going to have all of those combined municipalities, whether they be Sudbury or Hamilton or Ottawa or Toronto, in situations where they have hundreds and hundreds of extant bylaws that have never been successfully amalgamated in eight or nine years, and now they're going to have to do it all within three. I question how you think this is possibly going to work.

Mr. Sergio: Quickly, I think this would bring some conformity to the provincial plan, so I think three years seems to be quite acceptable.

Mr. Prue: On a recorded vote then. I can't support it.

Mr. Hardeman: One more question: We had the parliamentary assistant mention a couple of times that an individual was supportive of these amendments. I wondered if the committee could hear from the individual so we could be assured that she is so happy with the amendments as they're being proposed. I'm somewhat surprised that she would know about the amendments and had already consented to them when I didn't get them until last week when all this happened.

Ms. MacLeod: The city of Ottawa just e-mailed me and said they didn't even get the Liberal amendments.

Mr. Hardeman: I'm just a little concerned as to how Hazel got it all and we didn't get it.

The Vice-Chair: Okay. We'll call the vote. It's a recorded vote.

Ayes

Flynn, Lalonde, Mossop, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The motion is carried.

Page 41. I believe pages 41 and 42, because we're in the same situation—page 40 carried—the section was struck out and substituted. So yours reflects in that section, if I'm not mistaken. But it's open to you.

Mr. Prue: I would question: This is subsection (7.1). This is completely different; this is not anything that has been dealt with.

The Vice-Chair: Okay. Page 41?

Mr. Prue: You can tell me if I'm wrong, but adding a new subsection to something we've just passed is not—

Interjections.

Mr. Prue: I would draw your attention, Mr. Chair, to subsection (7). There is a (7) but there is no (7.1). All my amendment does is add a (7.1) to the bottom of it. It is not in any way changing what is here; it is simply adding an additional amendment to it. If there is any technical difficulty, the only difficulty would have been that maybe my amendment to the motion should have been dealt with first.

Mr. Hardeman: It should have been an amendment.

Mr. Prue: But it was not dealt with in that order.

The Vice-Chair: Okay. My understanding is that (7.1) should have been dealt with when the last motion was on the floor. I think that in order to open it up now, I would need consent.

Mr. Sergio: Let's get some clarification here: What the motion does indeed would remove the appeals related to official plan amendments that are required in order to conform with provincial plans.

Mr. Prue: I can explain it very simply if you will allow me to proceed.

The Vice-Chair: The thing is, it should be read first. It hasn't been read.

Mr. Sergio: That's fine; okay.

Interjection.

The Vice-Chair: It's out of order; right. I need consent to reopen the last one; that's the one on page 40.

Interjection.

The Vice-Chair: We're just getting some advice. What I see here and what I'm understanding—certainly the clerk will assist here—is that the section on page 40 was carried. In order to have this amendment, we would need unanimous consent to bring it on, and Mr. Prue would present it. We'd have a debate. It would be voted on as an amendment, and then we would vote on the amended motion. Is there unanimous consent to bring this forward? It's agreed.

Mr. Prue: If I could assist—

The Vice-Chair: We're reopening page 40. I'm asking for consent now to open the government motion on page 40. Do we have consent? We do.

Mr. Prue: If I could, because I'm trying to be fair here, there are both motions, 41 and 42. I would agree that 42 would be ruled out of order because we have dealt with that section.

Interjection.

Mr. Prue: You don't have 42? What's the next one? Because both of them will be subject to the reopening. I'm trying to be fair: 42 should be ruled out of order, and I would agree to that.

The Vice-Chair: That's fine.

Mr. Prue: Just to thank my friends for a hearing, you're not going to have to hear this one.

The Vice-Chair: That's just like those other ones that we've had all day.

Mr. Prue: Yes, exactly. To deal with 41—

Interjection.

The Vice-Chair: We're ruling it out of order because it's already been—

Mr. Prue: I'm just telling you that that will, I agree, be ruled out of order when the time comes.

The Vice-Chair: Right.

Mr. Prue: But 41—I've been given slightly amended wording now in view of what's happened.

I move that the government motion remaking section 26 of the Planning Act be amended by adding the following subsection:

“Appeals restricted

“(7.1) Despite anything else in this act, there is no appeal to the municipal board in respect of an official plan amendment that is made to ensure that the plan conforms with a provincial plan.”

Just to explain what this is about, there are numerous provincial plans. The government has passed a whole bunch of them in the last two years. Virtually none of those plans have yet made it into the official plans of the municipalities of Ontario. There are growth plans, there's a green plan, there's a Niagara plan—none of these plans are there. They're new, and they will require the municipalities to bring their official plans into conformity with them at their next official plan review.

There are also many people out there who oppose those. You heard from them. What we don't want to happen is that they will attempt to appeal the council decisions, causing the municipalities to spend scarce resources and staff to go to the Ontario Municipal Board, when all the municipalities are trying to do, and what they are obliged to do, is bring their own official plan into conformity with the provincial plan.

1510

What we're saying is, if that's all they are doing in bringing their plan into conformity with the provincial plan, they ought not to be forced to go and defend that before the Ontario Municipal Board, hire lawyers, send planners and do everything else. We think that where the municipalities are acting in conformity with the province, there ought not be a right of someone to appeal.

Mr. Hardeman: I understand and respect the amendment for trying to clarify the fact that municipalities will be obligated to have an official plan that meets the provincial policy, because, obviously, the act now will dictate that they must be consistent with the provincial policy statements. These acts would be, in fact, policy statements that the province has made.

Having said that, with the other changes in the act to the Ontario Municipal Board, I think the Ontario Municipal Board will take that into consideration. That's why they were there. I think, on average, you will see very few people taking that challenge, because of their chance of success. Since the Ontario Municipal Board can't make the decision based on the old policies but on the new policies in effect at the time of the decision, I don't see them taking it to the board.

I have real concern that this is another case where we're going to take away someone's right to be heard by an overseeing authority such as the Ontario Municipal Board on decisions made by local municipalities. It's one thing to say an official plan amendment is not eligible for

an appeal if it's done to meet provincial policy statements, but if you can't appeal, can we be sure that everyone will be done with the end result that it meets the provincial policy, and no further or no different? I'm not sure you can be, and I think you need the ability to allow people to go to the Ontario Municipal Board if they have a rightful complaint about how the municipality corrected a problem or dealt with a problem. I can't support this.

Mr. Prue: You have 450 municipalities out there that are going to have to come in with conformity. Each and every one of them might be subject to appeal. Each and every one of them is going to have to spend money, and most of them don't have it. The choice is yours. It's as simple as that.

The Vice-Chair: Any further comments?

Mr. Sergio: Just briefly, Mr. Chairman. I sympathize with the member, because he's probably right, there are a number of applications outstanding, but it is because of exactly that, that there's a number of interrelated matters, and we really don't know if they are provincial plans and provincial policies and, indeed, what this motion does is remove, as Mr. Hardeman mentioned here, appeals related to official plan amendments that are required in order to conform to official plans. So I sympathize with the member but, unfortunately, I can't support it.

Mr. Prue: Recorded vote, please.

Ayes

Prue.

Nays

Flynn, Hardeman, Lalonde, MacLeod, Mossop, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Now, because we had this as an amendment, we have to go and open up—

Interjection.

The Vice-Chair: Sorry, it's open. We have to vote on the government motion—because it was opened, we have to vote on it. That's right. Mr. Hardeman?

Mr. Hardeman: Again, if the member is willing to withdraw it, I have no problem with not dealing with the three to six years, but it would seem to me that if the section has been opened, 41 or 42 is now in order.

The Vice-Chair: I think Mr. Prue was withdrawing it.

Mr. Prue: I didn't say I would withdraw it; I just said it should have the same fate as before, that it would be ruled out of order. However, if it is open and Mr. Hardeman wants to deal with it, then I guess he's technically right; it is open. I do not intend because I gave my word I wouldn't, but if he wants to, go ahead.

Mr. Hardeman: I don't think it's a matter of whose word it was, it's a matter, I think, of legalities. The section is open, so we should deal with it.

Mr. Prue: You're absolutely right.

Mr. Hardeman: I move that subsection 26(8) of the Planning Act, as set out in the government's motion, be amended by striking out "three years" and substituting "six years."

The Vice-Chair: Any comments on this? All in favour?

Interjection.

The Vice-Chair: It was an NDP motion; it's now a PC motion. This is what I'm calling the vote on. All those in favour? All those opposed? The motion is lost.

Now I open up the government motion on page 40. All those in favour? All those opposed? The motion is carried.

Now we're at the end of section 12. Shall section 12, as amended, carry? All those in favour? Opposed? Carried.

Thank you for your patience. There was a little confusion, but we'll get through it.

We move on to section 13. We have page 43, a government motion.

Mr. Rinaldi: I move that section 13 of the bill be amended by adding the following subsection:

"(1.1) Section 28 of the act is amended by adding the following subsection:

"Affordable housing

"(1.1) Without limiting the generality of the definition of 'community improvement' in subsection (1), for greater certainty, it includes the provision of affordable housing."

The Vice-Chair: Any comments on that motion? I'll call the vote. All those in favour? Opposed? The motion is carried.

On page 44, a government motion.

Mr. Lalonde: I move that subsection 13(4) of the bill be struck out and the following substituted:

"(4) Subsection 28(4.1) of the act is amended by striking out '17(15) to (22) and (31) to (50)' and substituting '17(15) to (23) and (31) to (50.1).'

"(4.1) Subsection 28(4.2) of the act is amended by striking out '17(15) to (30), (44) to (47) and (49) and (50)' and substituting '17(15) to (30.1), (44) to (47) and (49) to (50.1).'"

The Vice-Chair: Any comments?

Ms. MacLeod: Could the government tell us what this means practically, in terms of the rationale?

Mr. Sergio: These are technical changes to recognize such a section renumbering.

The Vice-Chair: Any further comments? We'll vote on that motion. All those in favour? Opposed? The motion is carried.

Page 45 is a government motion. Mr. Flynn.

Mr. Flynn: This is another technical change. It just makes reference to a new subsection.

I move that section 13 of the bill be amended by adding the following subsection:

"(6.1) Subsection 28(8) of the act is amended by striking out 'under subsection (6) or (7)' and substituting 'under subsection (6), (7) or (7.2).'"

1520

The Vice-Chair: Thank you. Any comments? Okay. All those in favour of the motion? Those opposed? Carried.

Shall section 13, as amended, carry? All those in favour? Opposed? The motion is carried. The section is carried.

We're on section 14, page 46. We have a PC motion.

Ms. MacLeod: I move that subsection 14(4) of the bill be amended by adding the following provision between subsections 34(10.2) and 34(10.3) of the Planning Act:

"Regulations

"(10.2.1) The minister may make regulations,

"(a) determining what constitutes a completed application for the purposes of this section; and

"(b) requiring that a preconsultation process be established for the purposes of this section and setting out standards and rules for the carrying out of the preconsultation process."

Similar to section 10(4), we believe that this could be abused and utilized as a delay tactic and that there's more certainty with this amendment for the process.

The Vice-Chair: Any further comments, discussion? Those in favour of the motion? Those opposed? The motion is lost.

We now move to page 47. This is a government motion. Ms. Mossop.

Ms. Mossop: I move that subsection 34(10.4) of the Planning Act, as set out in subsection 14(4) of the bill, be struck out and the following substituted:

"Response re completeness of application

"(10.4) Within 30 days after the person or public body that makes the application for an amendment to a bylaw pays any fee under section 69, the council shall notify the person or public body that the information and material required under subsections (10.1) and (10.2), if any, have been provided, or that they have not been provided, as the case may be.

"Motion re dispute

"(10.4.1) Within 30 days after a negative notice is given under subsection (10.4), the person or public body or the council may make a motion for directions to have the municipal board determine,

"(a) whether the information and material have in fact been provided; or

"(b) whether a requirement made under subsection (10.2) is reasonable.

"Same

"(10.4.2) If the council does not give any notice under subsection (10.4), the person or public body may make a motion under subsection (10.4.1) at any time after the 30-day period described in subsection (10.4) has elapsed.

"Notice of particulars and public access

"(10.4.3) Within 15 days after the council gives an affirmative notice under subsection (10.4), or within 15 days after the municipal board advises the clerk of its affirmative decision under subsection (10.4.1), as the case may be, the council shall,

"(a) give the prescribed persons and public bodies, in the prescribed manner, notice of the application for an amendment to a bylaw, accompanied by the prescribed information; and

"(b) make the information and material provided under subsections (10.1) and (10.2) available to the public."

The Vice-Chair: Thank you. Any comments on the motion? If not, I'll call the vote. All those in favour? Opposed? The motion is carried.

Page 48, government motion. Mr. Rinaldi.

Mr. Rinaldi: I move that subsection 34(10.5) of the Planning Act, as set out in subsection 14(4) of the bill, be amended by striking out "subsection (10.4)" and substituting "subsection (10.4.1)."

The Vice-Chair: Thank you. Any comments on the motion? I'll call the vote. Sorry. Mr. Hardeman.

Mr. Hardeman: I have a question. What does it do?

Mr. Sergio: It's a consequential amendment and is necessary to cross-reference a renumbered section. That's all.

The Vice-Chair: Okay. All those in favour? Those opposed? Carried.

Page 49, a government motion. Mr. Lalonde.

Mr. Lalonde: I move that subsection 14(5) of the bill be struck out and the following substituted:

"(5) Subsections 34(11) and (11.0.1) of the act are repealed and the following substituted:

"Appeal to OMB

"(11) Where an application to the council for an amendment to a bylaw passed under this section or a predecessor of this section is refused or the council refuses or neglects to make a decision on it within 120 days after the receipt by the clerk of the application, any of the following may appeal to the municipal board by filing a notice of appeal with the clerk of the municipality:

"1. The applicant.

"2. The minister.

"Consolidated Hearings Act

"(11.0.1) Despite the Consolidated Hearings Act, the proponent of an undertaking shall not give notice to the hearings registrar under subsection 3(1) of that act in respect of an application for an amendment to a bylaw unless the council has made a decision on the application or the time period referred to in subsection (11) has expired.

"Same

"(11.0.2) The municipal board shall hear the appeal under subsection (11) and shall,

"(a) discuss it;

"(b) amend the bylaw in such manner as the board may determine; or

"(c) direct that the bylaw be amended in accordance with the board's order.

"Time for filing certain appeals

"(11.0.3) A notice of appeal under subsection (11) with respect to the refusal of an application shall be filed no later than 20 days after the day that the giving of notice under subsection (10.6) is completed.

"Appeals restricted re certain amendments"

"(11.0.4) Despite subsection (11), there is no appeal in respect of all or any part of an application for an amendment to a bylaw if the amendment or part of the amendment proposes to implement,

"(a) an alternative to all or any part of the boundary of an area of settlement; or

"(b) a new area of settlement.

"Same

"(11.0.5) Despite subsection (11), if the official plan contains policies dealing with the removal of land from areas of employment, there is no appeal in respect of all or any part of an application for an amendment to a bylaw if the amendment or part of the amendment proposes to remove any land from any area of employment, even if other land is proposed to be added."

The Vice-Chair: I just wonder if I could ask you to reread the first line on page 2.

Mr. Lalonde: "(a) dismiss it."

The Vice-Chair: Right. Now go down to "Appeals restricted," and read (a) again.

Mr. Lalonde: "(a) an alteration to all or any part of the boundary of an area of settlement; or"

The Vice-Chair: Okay. I wonder if you could read the two last lines on that page. I just want to make it clear—

Mr. Lalonde: Shall I read—

The Vice-Chair: It's not necessary to read the whole thing but I would say, for amendment purposes, start with—

Mr. Lalonde: "... to a bylaw if the amendment or part of the amendment proposes to remove any land from an area of employment, even if other land is proposed to be added."

Is that okay?

The Vice-Chair: Yes, thanks.

We've had the motion. Any discussion, any comments?

Mr. Hardeman: I'm wondering, in the appeal to the Ontario Municipal Board, who can appeal? Could I get some indication of what's the reason the minister needs to be able to appeal an Ontario Municipal Board—or force a municipality to go to the Ontario Municipal Board?

Mr. Sergio: I think this deals with some issues that we dealt with already before with respect to timing on decision-making on applications, including with respect to areas of employment. We want to make sure that indeed no decisions are made, especially with respect to areas of employment, without a council decision or consultation, which is a public hearing.

Mr. Hardeman: But if the applicant can appeal, could you indicate to me what you would see as the need for the minister to appeal? This is based on council not making a decision. Why would the minister ever want to appeal and force council to make a decision when they can force council to make a decision because they're the approval process?

Mr. Sergio: If there are provincial interests, I think the minister would have a right to an appeal, especially with respect to employment lands.

1530

The Vice-Chair: We have heard the motion. I'll call the vote. All those in favour? Those opposed? The motion's carried.

I believe we're on page 50 now. It's an NDP motion.

Mr. Prue: I believe it has the same fate as all the others.

Mr. Hardeman: Say it isn't so.

The Vice-Chair: All right. Page 51, we have a government motion. Mr. Rinaldi.

Interjection.

The Vice-Chair: Oh, sorry. Mr. Flynn.

Mr. Flynn: It's a long one.

I move that subsections 14(6), (7) and (8) of the bill be struck out and the following substituted:

"(6) Subsections 34(12) to (14.2) of the act are repealed and the following substituted:

"Information and public meeting; open house in certain circumstances

"(12) Before passing a bylaw under this section, except a bylaw passed pursuant to an order of the municipal board made under subsection (11) or (26),

"(a) the council shall ensure that,

"(i) sufficient information and material is made available to enable the public to understand generally the zoning proposal that is being considered by the council, and

"(ii) at least one public meeting is held for the purpose of giving the public an opportunity to make representations in respect of the proposed bylaw; and

"(b) in the case of a bylaw that is required by subsection 26(9) or is related to a development permit system, the council shall ensure that at least one open house is held for the purpose of giving the public an opportunity to review and ask questions about the information and material made available under subclause (a)(i).

"Notice

"(13) Notice of the public meeting required under subclause (12)(a)(ii) and of the open house, if any, required by clause (12)(b),

"(a) shall be given to the prescribed persons and public bodies, in the prescribed manner; and

"(b) shall be accompanied by the prescribed information.

"Timing of open house

"(14) The open house required by clause (12)(b) shall be held no later than seven days before the public meeting required under subclause (12)(a)(ii) is held.

"Timing of public meeting

"(14.1) The public meeting required under subclause (12)(a)(ii) shall be held no earlier than 20 days after the requirements for giving notice have been complied with.

"Participation in public meeting

"(14.2) Every person who attends a public meeting required under subclause (12)(a)(ii) shall be given an

opportunity to make representations in respect of the proposed bylaw.

“Alternative procedure

“(14.3) If an official plan sets out alternative measures for informing and securing the views of the public in respect of proposed zoning bylaws, and if those measures are complied with, subsections (12) to (14.2) do not apply to the proposed bylaws, but subsections (14.4) and (14.6) do apply.

“Open house

“(14.4) If subsection (14.3) applies and the proposed bylaw is required by subsection 26(9) or is related to a development permit system,

“(a) the council shall ensure that at least one open house is held for the purpose of giving the public an opportunity to review and ask questions about the proposed bylaw; and

“(b) if a public meeting is also held, the open house shall be held no later than seven days before the public meeting.

“Information

“(14.5) At a public meeting under subclause (12)(a)(ii), the council shall ensure that information is made available to the public regarding who is entitled to appeal under subsections (11) and (19).

“Where alternative procedures followed

“(14.6) If subsection (14.3) applies, the information required under subsection (14.5) shall be made available to the public at a public meeting or in the manner set out in the official plan for informing and securing the views of the public in respect of proposed zoning bylaws.”

The Vice-Chair: Thank you. Any comments?

Mr. Prue: Again, this entrenches what you’ve already done, but I have to say it again: “(14.5) At a public meeting under subclause (12)(a)(ii), the council shall ensure that information is made available to the public regarding who is entitled to appeal under subsections (11) and (19).” There is no provision in the bill anywhere for people who are not present at the meeting to be given that information, even people who make written representations. There’s nothing in here that says those who have made written representations shall be informed of the right to appeal; it’s only those who are in attendance at the meeting. People who neither were at the meeting nor made written representations will not be given that information. Even if it runs contrary to them, they’ll not be told. It seems that it is a way of making sure that the public is blocked at every exit.

Mr. Hardeman: I would agree with Mr. Prue, and obviously it’s not going to change in this section, as it hasn’t changed in all the others. I’ll suggest to the government side of the committee that in my years involved in municipal politics, of the individuals who appealed planning applications, the vast majority were people who did not get involved with the system until after council had made a decision that was, in their opinion, contrary to what they wanted for their community. The general population doesn’t seem to get involved in the process of applications until it becomes quite evident what’s going

to happen to their community and in their opinion it’s wrong. As long as they agree with the applications, they have no interest in the planning process. They’re not directly involved.

After this is put forward and implemented, I think we’re going to see a lot of people who are going to come to municipal people and say, “How do I stop this now?” There is an appeal process, but the thing about it is, you had to have appealed last week. That’s what every one of them who asked that question is going to get as an answer: “You’ve missed the boat.” I think something needs to be done to stop that from happening.

Mr. Prue: If I could ask the government about the intention to provide that information to people who have made written submissions, because it’s not in here. You’re only saying that you do it at the meeting, and I think that’s a glaring omission as well.

Mr. Sergio: If there is a written submission?

Mr. Prue: People are allowed to appeal if they either make an oral presentation before the meeting or provide written submissions in advance of the decision being made. But in here, the only place that they are informed of their right to appeal is at the meeting.

“Information

“(14.5) At a public meeting under subclause (12)(a)(ii), the council shall ensure that information is made available to the public regarding who is entitled to appeal,” but there is nothing that says that you write to those people who made a written representation and who may not be at that public meeting. Surely they have the right to know they can appeal.

Mr. Sergio: I don’t think this can be any clearer than what it is, and I think the explanation that our solicitor gave some time ago with respect to that process at public hearings—whoever is at a public hearing, has put their name down to speak or to make a presentation, it is quite normal that they will be notified—

Mr. Prue: What about the people who made written submissions?

Mr. Sergio: Both. I think if you are there and you make an oral submission, your name has been given as well. But this (14.5) is very straightforward and I don’t see a problem with it. We tend to differ, Mr. Chairman.

Mr. Flynn: I would think, in answer to Mr. Prue’s question, that any municipality that was acting in good faith would include that information in the advertising that would give rise to the person’s attendance at the meeting or would give rise to the person sending in a written submission in the first place. I think what this is proposing is something over and above, that at the public meeting the rules as to who is allowed to appeal are clearly outlined.

Thinking of my own municipality, certainly we would apprise our citizens of their rights and their obligations under the new legislation as soon as possible. I see this as an add-on, something that makes the system better. I don’t think it’s the only way that people will be notified.

Mr. Hardeman: I’m a little concerned. I think the government’s intention is that everyone should be in-

formed as to their procedure at the end of the decision-making, that if the decision is against their wishes, they have a right to appeal. But I also agree with Mr. Prue that there is nothing in this section—the section is quite clear that those instructions and that information be given to those who are present at the meeting, but there is nothing that says that if I wrote in to the public meeting—not to council who are necessarily making the decision but as part of the general mail-out and general information—the municipality is ever going to reply to me with even the decision they made or with my right to appeal. I think, contrary to the parliamentary assistant's suggestion that this is as clear as it can be, this is not clear as to what happens to a written submission and whether they ever get informed about their rights to appeal and even the decision made. It may be well after the appeal deadline before they know that council decided to approve the application as opposed to turning it down.

1540

Mr. Sergio: The only thing I can add, Mr. Chairman, is that I think, for the first time, the act, as it is proposed, goes a long way to bringing some real directions to council and some justice to the very populace, the ones who participate. In the end, it will be up to the local municipalities to inform the people. We have to see how this is going to work out. I believe that it's in the interest of the local municipality to see that, indeed, those who are at a meeting get to speak and those who want to make a written submission will be written back. I would think it would be in their interest to respond. I can't say if they will be responded to or not. That's too hypothetical.

Mr. Hardeman: I don't want to belabour this point, as this isn't a partisan position at all, but we have to remember that the decision made by the municipality—the municipality is not going to go to great lengths to try to get someone to appeal it. They've already decided that's the way it should be. So are we going to make sure that most of the municipalities are in fact going to inform the people who are going to appeal the municipal decision of how they should go about doing that? Or are we going to see that they send the notices out just after the deadline for the appeal, and their appeals will not be heard? It's important. As we look at the other part of the act, it talks about if municipalities, for whatever reason, decide to delay a decision-making, the applicants for planning can go to the Ontario Municipal Board to get the municipalities to move or to have someone else make a decision. But there's nothing in here that deals with people who have an objection to the application, who have written in their objection, but no one has told them how they go about taking it further if council disagrees with them. I'm a little concerned that council may not be quite as vigilant in making sure that the people who want to appeal their decision are informed of how they do that.

Mr. Prue: If I could, Mr. Chair, I'd like a question of the solicitor on that section, if he could answer that question. My question is a very simple one: If, at a public meeting, the council or the mayor or whoever is in charge of the public meeting reads out the clause and says who

may appeal, is the council in legal compliance under this section if they do not send out letters to those who are not in attendance but who provided written submissions?

Mr. Shachter: In that circumstance, a council would have to provide information and notice in the prescribed manner, or the prescribed information, which would be set out under the regulation. In response to the question, under 34(19), one of the parties who does have the ability to appeal is an individual who made written submissions to council, so that what you would have is a circumstance where, if the person has already made written submissions to council, it would not be necessary for council to then advise them that they have the right to appeal, because they'd already have that right.

Mr. Prue: But they would have told everybody who was in the room that they have that right, but not the people who made written submissions.

Mr. Shachter: Potentially, because the persons who already made the written submissions already have the right to appeal.

Mr. Prue: But they may not know it.

Mr. Shachter: Except that the people who attend a meeting would have to be advised, because they don't know that just attending is not enough in order to be able to have the right to appeal. You see, it's a little bit of a different circumstance, because you have to actually make oral submissions at council in order to be able to appeal.

Mr. Prue: Okay. But would a council that stood up in the meeting and gave people the right be in compliance with this section of the act if they chose not to write to those who had made written submissions? Would they be in compliance?

Mr. Shachter: My understanding is, yes, they would.

Mr. Prue: That's what I thought. Okay. Thank you.

The Vice-Chair: Thank you. We have had debate on this.

Mr. Prue: Recorded, please. I want to see who wants to vote for that.

The Vice-Chair: I call the vote.

Ayes

Flynn, Lalonde, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The motion is carried.

Now we have page 52, an NDP motion. I believe it's one of those—

Mr. Prue: The same fate.

The Vice-Chair: Okay. Page 53: We have a government motion.

Mr. Rinaldi: I move that subsection 14(9) of the bill be amended by adding the following as subsection 34(16.0.1) of the Planning Act:

"Same

“(16.0.1) The prescribed conditions referred to in subsection (16) may be made subject to such limitations as may be prescribed.”

The Vice-Chair: Any comments?

Mr. Hardeman: Just an explanation, please, of what we’re trying to do here.

Mr. Sergio: Just briefly for the member, we want to ensure that there is indeed a consistent approach in use throughout the province; nothing more than that.

The Vice-Chair: We’ll call the vote. Those in favour? Those opposed? The motion is carried.

Page 54, a government motion.

Mr. Lalonde: I move that subsection 34(16.2) of the Planning Act, as set out in subsection 14(10) of the bill, be amended by striking out “(16) and (16.1)” and substituting “(16), (16.0.1) and (16.1)”.

The Vice-Chair: Any comments?

Mr. Sergio: We dealt with this before.

The Vice-Chair: We’ll call the vote. All those in favour?

Interjection.

The Vice-Chair: Oh, I didn’t see you. I thought you were voting; sorry.

Mr. Hardeman: I was going to ask a question because I’m still confused. We’re striking out (16) and (16.1) and substituting (16) and (16.0.1). Why would we strike out (16)? You’re putting it right back.

Interjection.

Mr. Sergio: It may be small in numbers—you’re trying to confuse me—but it’s a consequential amendment.

The Vice-Chair: We’ll call the vote. Those in favour? Those opposed?

Ms. MacLeod: We just split the caucus.

The Vice-Chair: Carried.

Page 55, a government motion.

Mr. Flynn: I move that subsection 14(11) of the bill be amended by striking out “clause (12)(c)” at the end and substituting “subclause (12)(a)(ii)”. It’s just a consequential amendment.

The Vice-Chair: Any comments?

All in favour? Opposed? The motion is carried.

Page 56, a government motion.

Mr. Rinaldi: I move that subsection 14(12) of the bill be struck out and the following substituted:

“(12) Subsection 34(19) of the Planning Act is repealed and the following substituted:

“Appeal to OMB

“(19) Not later than 20 days after the day that the giving of notice as required by subsection (18) is completed, any of the following may appeal to the municipal board by filing with the clerk of the municipality a notice of appeal setting out the objection to the bylaw and the reasons in support of the objection, accompanied by the fee prescribed under the Ontario Municipal Board Act:

“1. The applicant.

“2. A person or public body who, before the bylaw was passed, made oral submissions at a public meeting or written submissions to the council.

“3. The minister.

“No appeal re second unit policies

“(19.1) Despite subsection (19), there is no appeal in respect of a bylaw that is passed to permit the erecting, locating or use of two residential units in a detached house, semi-detached house or row house situated in an area where residential use, other than ancillary residential use, is permitted.”

1550

The Vice-Chair: Any comments?

Mr. Prue: It’s not a comment; it is just a request that this be a recorded vote. I would ask that it be split between the two sections—subsection (19), the appeal to the OMB, and subsection (19.1)—as they deal with two different things. I support one aspect and not the other.

The Vice-Chair: This is one motion, and we’ll be voting on the motion.

Mr. Prue: You cannot split a motion?

Mr. Sergio: No.

Mr. Prue: It’s two subsections, (19) and (19.1), dealing with two different aspects. One is dealing with second-unit policies, and the other is dealing with an appeal to the Ontario Municipal Board. I don’t even see how they’re related.

The Vice-Chair: It’s in subsection 14(12) of the bill.

Mr. Prue: It’s also in subsections 34(19) and 34(19.1). I don’t know how a motion can’t be split. I’ve never heard of this in my life. Is there some procedure in the province that will not allow a motion to be split? I’m not aware of any rule within the province of Ontario that does not allow a motion to be split.

Interjection.

The Vice-Chair: We’re just getting some information here. While we’re getting the information, did you want—

Mr. Hardeman: There’s nothing I want more than moving this along, Mr. Chair.

I do have a question. Again, it deals with the person or public body who, before the bylaw was passed, made oral submissions at a public meeting. I’d like to know if there’s any indication of how we’re going to decide or how the Ontario Municipal Board is going to decide who spoke at the public meeting. There have been some questions asked from municipalities as to when they hold this public meeting, do they have to have a Hansard to record what was said so we know who has a right to appeal? There seems to be nowhere in the bill that defines, that suggests municipalities need to do that. Secondly, we keep talking about a person who made an oral presentation, but we have no record of who did. So I wonder if there’s any indication as to how that’s going to be handled for an appeal to the Ontario Municipal Board.

Mr. Sergio: I don’t have a particular answer as to how the OMB would know if an individual has attended orally or in writing. But I would assume that if I were the applicant, I would make sure that the name of the appellant is somewhere registered, either by having given an oral presentation or a written presentation with the date or a letter to council of some sort. Other than that, I

really don't know how the OMB would, other than asking—it depends if they make a direct presentation themselves or through a lawyer or a planner or whatever. I really don't know. If there's a better answer—

Mr. Hardeman: I guess from that, and I don't want to prolong it, I would suggest that maybe the government needs to put something in there, at the very least by regulation, mandating that municipalities must record the proceedings at a meeting so there is a record as to who can appeal. I can see all kinds of cases where we might have a situation where the developer doesn't want the objections, so he just says, "Well, I don't remember them speaking." How do you prove that they did or didn't? So I would suggest that somehow we need to make sure that if we're going to depend on oral presentations, there's a record of those presentations being made.

The Vice-Chair: Thank you. We're still waiting on—I apologize.

Interjection.

The Vice-Chair: My advice here has been that these two sections that are being discussed and the desire to have them split really does not make sense unless they're part of the one motion.

Interjection.

The Vice-Chair: It can't. It doesn't make sense. I've been told it doesn't make sense to have them as two stand-alone motions, so we will deal with the motion that was presented and read by Mr. Flynn.

Mr. Prue: If I could, Mr. Chair, I just want to make a statement to the record, just so that it's very clear in the record. I am being now forced to vote against a motion because I disagree with the first half. I want it very clear on the record that I do, and the NDP does support, the second aspect of this; that is, that there be no appeal regarding second unit policies. But in spite of that, I will be forced to vote no even though I do support that.

The Vice-Chair: Thank you. We'll call the vote.

Ayes

Flynn, Lalonde, Mossop, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The motion is carried.

Page 57, an NDP motion. I believe it's—

Mr. Prue: The same fate.

The Vice-Chair: Okay. Page 58, a government motion.

Mr. Lalonde: I move that section 14 of the bill be amended by adding the following subsection:

"(12.1) Subsection 34(23) of the act is repealed and the following substituted:

"Record

"(23) The clerk of a municipality who receives a notice of appeal under subsections (11) or (19) shall ensure that,

"(a) a record that includes the prescribed information and material is compiled;

"(b) the notice of appeal, record and fee are forwarded to the municipal board within 15 days after the last day for filing a notice of appeal under subsection (11.0.3) or (19), as the case maybe; and

"(c) such other information or material as the municipal board may require in respect of the appeal is forwarded to the board."

The Vice-Chair: Any comments? Those in favour of the motion? Those opposed? The motion is carried. It had more than enough.

Next, we have page 59, a government motion.

Mr. Flynn: I move that subsection 14(13) of the bill be struck out and the following substituted:

"(13) Section 34 of the act is amended by adding the following subsections:

"Restriction re adding parties

"(24.1) Despite subsection (24), in the case of an appeal under subsection (11) that relates to all or part of an application for an amendment to a bylaw that is refused, or in the case of an appeal under subsection (19), only the following may be added as parties:

"1. A person or public body who satisfies one of the conditions set out in subsection (24.2).

"2. The minister.

"Same

"(24.2) The conditions mentioned in paragraph 1 of subsection (24.1) are:

"1. Before the bylaw was passed, the person or public body made oral submissions at a public meeting or written submissions to the council.

"2. The municipal board is of the opinion that there are reasonable grounds to add the person or public body as a party.

"New information and material at hearing

"(24.3) This subsection applies if information and material that is presented at the hearing of an appeal described in subsection (24.1) was not provided to the municipality before the council made the decision that is the subject of the appeal.

"Same

"(24.4) When subsection (24.3) applies, the municipal board may, on its own initiative or on a motion by the municipality or any party, consider whether the information and material could have materially affected the council's decision, and if the board determines that it could have done so, it shall not be admitted into evidence until subsection (24.5) has been complied with and the prescribed time period has elapsed.

"Notice to council

"(24.5) The municipal board shall notify the council that it is being given an opportunity to,

"(a) reconsider its decision in light of the information and material; and

"(b) make a written recommendation to the board.

"Council's recommendation

"(24.6) The municipal board shall have regard to the council's recommendation if it is received within the

time period mentioned in subsection (24.4), and may but is not required to do so if it is received afterwards.

“Conflict with SPPA

“(24.7) Subsections (24.1) to (24.6) apply despite the Statutory Powers Procedure Act.”

1600

The Vice-Chair: Thank you. Any comments? If not, we'll have the vote. Those in favour? Opposed? The motion is carried.

I believe the NDP motion 60 and the PC motions 61 and 62, basically striking out—

Mr. Hardeman: Mr. Chairman, I need some advice from leg. council, but it would seem to me that the PC motion 61 to strike out “other than a public body” would also apply to the amendment that the government has put forward. They've changed the wording somewhat, but the issue is person and public body, and giving special status for the public body, and the intent of our amendment is to equalize it, to give the public body no preferential treatment. It would be, then, an amendment to the government motion.

Is that the one we just voted on?

Mr. Sergio: Yes.

Mr. Hardeman: I told you, Mr. Chairman, you're ahead of the game here. If it's already been voted on, I would suggest that—

The Vice-Chair: It has been voted on.

Mr. Hardeman: I express my great disappointment and I move on, recognizing the fate was going to be the same in the end.

The Vice-Chair: We will move on to page 63, a government motion.

Ms. Mossop: I move that section 14 of the bill be amended by adding the following subsection:

“(13.1) Subsection 34(25) of the act is amended by striking out ‘on its own motion or on the motion of any party’ in the portion before clause (a) and substituting ‘on its own initiative or on the motion of any party.’”

The Vice-Chair: Any comments on the motion? Those in favour? Opposed? The motion is carried.

Page 64. We have a government motion.

Mr. Rinaldi: I move that section 14 of the bill be amended by adding the following subsections:

“(16) Section 34 of the act is amended by adding the following subsection:

“Same

“(25.1.1) Despite the Statutory Powers Procedure Act and subsections (11.0.2) and (24), the municipal board may, on its own initiative or on the motion of the municipality or the minister, dismiss all or part of an appeal without holding a hearing if, in the board's opinion, the application to which the appeal relates is substantially different from the application that was before council at the time of its decision.

“(17) Subsection 34(25.2) of the act is repealed and the following substituted:

“Dismissal

“(25.2) Despite the Statutory Powers Procedure Act, the municipal board may dismiss all or part of an appeal

after holding a hearing or without holding a hearing on the motion under subsection (25) or (25.1.1), as it considers appropriate.

“(18) The English version of subsection 34(32) of the act is amended by striking out ‘on its own motion’ and substituting ‘on its own initiative.’”

The Vice-Chair: Thank you. Any comments on the motion? Those in favour of the motion?

Mr. Prue: I'd just like to draw to the member's attention that there is a subsequent motion we will make, number 71, which I assume will be ruled out of order when we get to it because we're dealing with it now again. What number 71 attempts to do, and perhaps what this motion should have done as well, is allow municipalities the authority not to look at everything, as you're suggesting, which we agree with, save and except the placement of the portables. I wonder why the government, if you can answer, chose not to allow the municipality the option of looking at where the portables might be placed within schoolyards or on school property, because if one were to place the portables perhaps too close to homes where the noise might bother the enjoyment of the homeowners, or if the school chose to put them in inappropriate locations, perhaps close to contaminated sites or overhead wires or something that caused the municipality some grief, I wonder why the municipality would not be consulted at least as far as the placement goes.

What you've said is that they're totally exempt. They can put them wherever they want. They can put them right up to the edge of the property, they can put them right close to somebody's backyard or their swimming pool, and I'm just wondering whether this is an oversight maybe gone just a little bit too far. Could you comment on that?

Mr. Sergio: I will and I would. I'm sorry, are we dealing with 64 or 65?

Mr. Prue: Am I dealing with the wrong one? I thought I was dealing with—

The Vice-Chair: We are on 64.

Mr. Prue: Exempting of school portables from site plans?

The Vice-Chair: No, that's not 64.

Mr. Sergio: I'd love to answer your question at the next motion.

Mr. Prue: I'm sorry, I thought that was included in this one.

The Vice-Chair: You'll have the details when we get to it.

Mr. Prue: I walked in the door and I thought we were on that one already.

Mr. Sergio: Still with 64, and we'll move to 65.

Mr. Hardeman: Again, just a question. I think it was explained to me earlier and I've forgotten, the issue of “Despite the Statutory Powers Procedure Act” twice in this motion. What is there in the act—

Mr. Sergio: And probably you'll see it a few more times. It means the same thing.

Mr. Hardeman: I just want to know what I had before this bill came into effect and what rights are taken away from someone through this act, through this amendment.

The Vice-Chair: Once again, state your name.

Mr. Shachter: Irvin Shachter, legal services branch, Municipal Affairs and Housing. As you noted before, the provisions of the Statutory Powers Procedure Act require the consent of the parties to a tribunal for a dismissal without a full hearing unless an act otherwise states. The Planning Act is an act that states otherwise. So, for example, the Planning Act could dismiss a matter, an appeal, without the necessity of a full hearing. It's to trump over the provisions of the Statutory Powers Procedure Act. The reason it's there twice is because there was a concern that it was not sufficiently clear that it applied to both aspects.

Mr. Hardeman: Okay. Could you then further it for me, if you could, why that is necessary? We've had two, three or four different places in this debate so far today about, "Don't worry about it because that's the way it already is in the act." Why is it that in this one we don't want to take the way it already is in the statutory authority act; we want it changed to it not applying?

Mr. Shachter: The Statutory Powers Procedure Act sets out provisions that apply to tribunals generally across the province. It sets out what would be called the benchmark. It also provides that the tribunals can set out their own rules and regulations, their own practice and procedure, if I can call it that. It also, though, says that there are a number of circumstances where there are, if I can call it, rules that are set out in the Statutory Powers Procedure Act that will apply unless the tribunal that's hearing it or the act that gives the tribunal the authority to hear this matter says that the Statutory Powers Procedure Act doesn't apply.

In this particular circumstance, it is a situation where the Planning Act currently trumps the SPPA in that respect. You'll know that throughout the whole of the Planning Act there are opportunities for the Ontario Municipal Board to dismiss appeals without a full hearing for various reasons. Without being able to—despite the SPPA, you'd have to follow those provisions in every single circumstance. It would make it very unwieldy in order to do that in every single case. That's why you have the "despite" reference in this act.

1610

Mr. Hardeman: So the word "despite" the Statutory Powers Procedure Act—that's presently in the Planning Act?

Mr. Schachter: That's correct. That's the term that's used.

The Vice-Chair: We shall have the vote. Those in favour? Those opposed? The motion is carried.

We've come to the end of section 14. Shall section 14, as amended, carry? All those in favour? Those opposed? The section is carried.

Moving on to section 15, on page 65 we have a government motion.

Mr. Lalonde: I move that section 15 of the bill be amended by adding the following subsections:

"(0.1) Section 41 of the act is amended by adding the following subsection:

"Exception

"(1.1) The definition of 'development' in subsection (1) does not include the placement of a portable classroom on a school site of a district school board if the school site was in existence on January 1, 2007."

I just want to clarify the point that was raised a little while ago. The school board has to abide by the zoning bylaw for the setback of where those portable classes are to be installed.

The Vice-Chair: Any comments?

Mr. Prue: Just in terms of setbacks, most municipalities have side-yard setbacks of approximately one to two feet. Most municipalities have backyard setbacks of approximately 15 feet, or 20 feet in some cases. I'm just wondering why the municipality would not be involved. A setback is a very small, small thing. If it went to a committee of adjustment, a setback is a minor variance, because most homes are only a foot or two apart, at least in metropolitan areas. I'm wondering why the municipality would not be involved in the placement of a portable. You could have 20 or 30 children in a portable, so that if the doors were open, it would conceivably cause considerable noise if you have a house adjacent to it. I'm wondering why the municipality would not be able to have some kind of comment as to the placement or the most appropriate placement, in terms of the municipality's bylaws, in terms of noise or park space or any other thing that could be thought of. Surely they should have some say—not that the portable shouldn't be there or that it has to meet all the building code requirements. I understand where the school board is coming from, but certainly where it is in terms of the community and the neighbourhood is something I think they should be involved in. Can you tell me why not?

Mr. Sergio: I can't tell you why not, but I can tell you some of the reasons. I'm sure that you were present. Especially the school boards were quite adamant that they do have some control with respect to existing sites. Existing sites provide some constraints with respect to siting portables on a site, opening up the planning process, if you will, through a site plan or whatever have you. This will consider some very extensive time; that could be very expensive as well for the local board. I don't have to tell you that most schools abut residential areas. Sometimes one resident may have a genuine concern that the portable may be too close or whatever, and this would indeed delay considerably the process of locating needed portables on the site. Those were the reasons the school boards brought forward, and I think they are reasonable ones, even though I'm of the same opinion that, yes, they should have some say. Unfortunately, it deals with existing sites where there are site constraints.

Mr. Prue: But there's no limit to how long some of the portables sit on the site. I've seen portables on a site,

and you have too, for 10 and 15 and 20 years. What is conceivable here is that it would be on an inappropriate site, done in haste, and then be there forever. That's why I'm suggesting that maybe we should, even if it's in consultation with the municipality, rather than just leaving them right out and having the school board put it wherever they want—I don't know. I'm not sure that we're heading in the right direction with this aspect of the bill.

I'm only asking the government members—there's 71. I don't know; you don't have to pass that either. You can rule it out of order because you've already dealt with this one. But I do think there are going to be an awful lot of unhappy people around the province when a portable or portables end up very close to residential properties and remain there for years.

Mr. Hardeman: This amendment says that this act will not apply to portables. Presently, there are certain criteria of what the school board must do before they wheel in portables. They must apply to the municipality for permits to put them there. Is that taking that obligation away? Presently there must be setbacks and so forth in their planning document as to how far from the property line they can situate a building. This isn't taking that away, is it?

Mr. Sergio: No. First of all, they have to make the zoning bylaws that they indeed can set up portables on the site. If they are existing site excluded, the municipality will have to issue the permit. I don't think they can hold it back.

Mr. Hardeman: Let's look at the city of Woodstock bylaw. I expect even the school sites have minimum setback distances from their property line for buildings. Does that not apply when this law is passed?

The Vice-Chair: Perhaps legal advice on the question?

Mr. Shachter: Irvin Shachter, legal services, municipal affairs and housing.

Mr. Hardeman: It's nice of you to join us today.

Mr. Shachter: And I have to tell you it's my pleasure. Thank you.

It's not intended to supplant the current zoning provisions. So if Woodstock, for example, has a zoning bylaw that has height, massing, density, setback requirements, all those requirements would still apply.

Mr. Hardeman: And that would be uniform across the province. So this is just, as they were siting new facilities, they couldn't go beyond what the zoning presently allows as far as setbacks go?

Mr. Shachter: That's correct.

Mr. Hardeman: This will ensure that nothing will be closer to the line tomorrow than it was yesterday.

Mr. Shachter: Remember that this isn't dealing with zoning. Zoning yesterday and tomorrow remains the same insofar as this provision is concerned. This provision only deals with site plan control matters. So all of the matters that a municipality would require to be dealt with in site plans—landscaping, benches, location of parking lots, things such as that—would not apply if it

was a portable classroom that was going to be located on a school site existing on January 1, 2007. But that doesn't take away from the zoning provisions that exist yesterday or tomorrow.

Mr. Hardeman: So if the bylaw states that for every so many student spaces we must have three parking spaces and they bring in 10 portables, so we need more parking spaces, you're suggesting that that part wouldn't apply tomorrow because that's exempt from the law now.

Mr. Shachter: The part of the zoning bylaw that would require parking spaces is not a site plan matter. Site plan deals with where the location of the parking spaces might be. The zoning bylaw will deal with the minimum number of parking spaces. No matter the number of portable classrooms that are located, you would still have that requirement, subject to either a zoning bylaw amendment or a minor variance.

The Vice-Chair: Mr. Prue, you had a question?

Mr. Prue: I just want to be very clear, because all of the laws will apply, but who will enforce them? The municipality is not a player here. So the school board knows that you must be at least two feet from the fence where you commence the building of the portable and they decide to put it one foot from the fence because they don't have to consult anybody. They don't have to go to the municipality. They simply build it and there it is. What happens then? The municipality takes the school board to court? How is it enforced?

Mr. Shachter: I don't think it would be any different today than yesterday. It would still be an enforcement matter. I understand there are zoning bylaw officials, municipal officials, who would go out and enforce the zoning bylaws, because that is a zoning bylaw matter, not a site plan matter.

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Mr. Prue: So it would be up to the school board to interpret the law without consulting the municipality, commence the building and then the municipality would have to be ever vigilant, show up on the school board property and do the measurements without having approved the plans?

Mr. Shachter: One of the things we have to remember is, whether the site plan control is in place or not with respect to these particular circumstances, the school board would still require a building permit in order to be able to locate it, because a portable classroom would still be a structure under the Building Code Act. Whether the school board would comply or not, it would have to, at the very least, set out on the drawings that it used to make an application for the building permit where it proposed to put the portable classroom, whether it actually located it where it said it was going to or not.

Mr. Prue: So they'd have to say where they're going to put it, but then they don't have to put it there? That's what I think you just said to me.

Mr. Shachter: It is, but that was in response to your question, which was in some sense, if you're going to make the application for a building permit and you're saying, "I'm going to locate a structure in a certain

location," it's contemplated that that's where the location will be and that if a building inspector comes out to inspect, that's the location where one would find that structure. That's all I meant to say. One would anticipate that if you put it in the drawings, that's where it's going to be located.

Mr. Prue: And what this bill does in effect is, if the school board says, "I want it down in that corner of the property" and the municipality says, "No, it won't cause any grief and any problem if you put it up in that corner because there are no houses there," the school board can have the right to say, "We don't care. We're putting it where we want"?

Mr. Shachter: Only within the context—

Mr. Prue: I don't know that. That's why I'm asking the question.

Ms. Mossop: They're as responsive to the parents in the neighbourhood as the municipality, if not more so, because they live under their thumb, unlike the guys downtown.

Mr. Sergio: And it's for the local kids.

Ms. Mossop: If they live right next door to each other, the parents and the community are going to have a fair bit of influence with the local school, more so than perhaps a bunch of guys downtown. That's just my suggestion in a common sense approach to this issue.

Mr. Hardeman: I was just going to say, I think the public authorities are all very responsive to the public. Having said that, I guess one would have to wonder why this act would have to protect the school board from municipal government. That's really what this amendment is doing, which up until now was never required. The school board and the local municipalities decided collectively on a site plan as to where a portable should be put. Now what we're saying is they no longer need to have the site plan approval in order to put up portables. Provided it's zoned properly, which is institutional, and they meet the minimum setbacks from their lot lines, they can put them anywhere they want without asking the municipality.

I'd like to believe, Ms. Mossop, that they were all working strictly for the best interests of their community. Then we wouldn't need this amendment, because I think the municipalities very much want to do what's in the best interests of their communities and I'm sure school boards do too.

Ms. Mossop: So that's two layers.

Mr. Hardeman: But their needs are different. What we're saying is, they're going to put up as many units as they need even though the property's too small, and the municipalities can't stop them from doing it now.

The Vice-Chair: Mr. Sergio has the floor.

Mr. Sergio: I think we have covered most angles here, Mr. Chairman, but there was the presentation by the school boards in which they said, "You have to help us streamline the process so that we don't get involved and mired in a six-month hearing or delayed by someone living five blocks away from the school." It's a neighbourhood school. It's an existing site. It may be smaller

than whatever, so they may have a constraint, yes, maybe abutting some residential area, but this deals with existing sites, with constrained sites, and it deals with expediency to accommodate perhaps an increase in students in that immediate neighbourhood. That school would be serving the local area and there is usually a parent-teacher council, whatever, which I'm sure has some influence as well. Schools and school boards, in most cases, are very much aware of local residents, local needs and local views.

Mr. Hardeman: I agree on that. I remember vividly the presentation from the school boards as to their concern, but I think we should all remember that their concern was not about the present process. They did not complain that they presently couldn't get their portables sited. Their only concern was that if you're going to make it more difficult and give more authority to municipalities, such as colour, design and exterior products, they couldn't even put in the types of portables they presently have.

Now, all of a sudden, we saw the fly on the wall, and the government has taken the sledgehammer to hit it, because all they wanted was the status quo, and the municipalities were happy with the status quo. They had site plan control on the portables. The school boards were happy, because they could bring in the standard portables, and they could work with the municipality on the site where everybody would think they were best suited.

Now, with this amendment, we have the situation that they no longer have to go through a site plan process with municipalities. They just have to go get a building permit and say, "We can plant. We can grow or build within two feet of the property line, so why don't we put them all as close to the street as we can so we have more playground in the back?" That's where they'll go and be part of the residential area.

I agree with you that something needs to be done to protect them from that other clause that we're going to deal with later about the design criteria. This is not solving the problem they spoke of; this is creating a bigger problem with taking the municipalities out of the planning process, as far as portables go.

The Vice-Chair: I think we've had debate on this. We'll have the vote. Those in favour of the motion? Opposed? Carried.

Page 66, a government motion.

Ms. Mossop: I move that section 15 of the Bill be amended by adding the following subsection:

"(1.1) Paragraph 1 of subsection 41(4) of the act is amended by adding at the end 'including facilities designed to have regard for accessibility for persons with disabilities.'"

The Vice-Chair: Any comments on the motion?

Mr. Hardeman: It's one of these motions where it is very difficult to resist saying it's a very good motion. I just want clarification as to "including facilities designed to have regard for accessibility". Does that mean that anything you do to a building to make it accessible to the

disabled will have to comply with this section? Is this just for special buildings or any building that puts a lift in?

Mr. Sergio: Any building.

Mr. Hardeman: To get this right: Any building is exempted from development, provided—this is in subsection 15(1) of the bill? That's the same section we were just dealing with?

Mr. Sergio: Dealing with 66?

The Vice-Chair: We're on page 66, yes.

Mr. Hardeman: Maybe you could clarify it for me then. What does this do for the buildings that are designed for the handicapped, for the disabled?

Mr. Sergio: It provides that a municipality may require plans to have regard for accessibility for persons with disabilities—exactly that, short and sweet.

Mr. Hardeman: Say that again?

Mr. Sergio: It provides that a municipality may require plans to have regard for accessibility for persons with disabilities. It's to make sure that they are accessible for persons with disabilities.

Mr. Hardeman: I quite agree with that. I just don't want other buildings exempt from the process.

The Vice-Chair: I'll call the vote. Those in favour? Opposed? Carried.

Page 67, a government motion.

Mr. Rinaldi: I move that subsection 15(2) of the bill be struck out and the following substituted:

“(2) Paragraph 2 of subsection 41(4) of the act is amended by striking out ‘and’ at the end of subparagraph (b) and by adding the following subparagraphs:

“(d) matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings, and their sustainable design, but only to the extent that it is a matter of exterior design, if an official plan and a bylaw passed under subsection (2) that both contain provisions relating to such matters are in effect in the municipality;

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“(e) the sustainable design elements on any adjoining highway under a municipality's jurisdiction, including without limitation trees, shrubs, hedges, plantings or other ground cover, permeable paving materials, street furniture, curb ramps, waste and recycling containers and bicycle parking facilities, if an official plan and a by-law passed under subsection (2) are in effect in the municipality; and

“(f) facilities designed to have regard for accessibility for persons with disabilities.”

The Vice-Chair: Thank you. Any comments on the motion?

Mr. Hardeman: I'd like to move an amendment to the motion.

I move that clause 41(4)(d) of the Planning Act, as put forward by the government motion—that section (d) be struck out and the following substituted:

“(d) matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings, and their sustainable design,

but only to the extent that it is a matter of exterior design, if,

“(i) an official plan and a bylaw passed under subsection (2) that both contain provisions relating to such matters are in effect in the municipality,

“(ii) the building is a designated heritage building or in a designated heritage conservation district under the Ontario Heritage Act, and

“(iii) the design details to not include specific materials that must be used;”

So that was an amendment to strike out section (d) of the government motion and replace it with our clause (d).

The Vice-Chair: Okay, that's the motion on page 68 that was just read. So we debate page 68, the PC motion just read, because it's been proposed as an amendment.

Mr. Flynn: I haven't seen it in writing, obviously, but it appears to be contrary to the amendment that's on the floor.

The Vice-Chair: It's on page 68. We're dealing with—

Mr. Flynn: I'd just ask the clerk to rule if it's not contrary to the matter that we were dealing with on 67. It doesn't appear to be an amendment to it; it appears to be directly contrary to what we would be asked to vote on.

Mr. Hardeman: Chairman, before you rule on its matter of order, I would point out that prior to reading the amendment, I was concerned as to whether I could put it in an amendment, because it is so similar to what the motion presently is. The only difference that I would refer to is (iii), which is, “the design details to not include specific materials that must be used”. There is nothing in the motion that the government has put forward that says that certain materials are going to be designated. That's totally different, so it's not contrary.

The other two are in fact identical to the (d) motion, only, in my opinion, in slightly more explicit wording. I don't think, having seen the government motion, I could have come closer to clause (d) with the motion that I just read into the record. Now we can rule on it whether you think it's in order.

Mr. Flynn: With that explanation, certainly I would like to accommodate my colleague. Why would we not just deal with 68 and 67 out of order, then, and just vote on 68 and then go to 67 after that?

The Vice-Chair: Basically that's what we're doing here.

Mr. Hardeman: Mr. Chairman, that's exactly what will happen. As I've read the whole section into the act, if that passes, it would go into your motion. If it doesn't pass, then we deal with the motion unamended. I'm fully expecting the government to support this amendment because in fact it does make an improvement to the resolution quite extensively.

Mr. Flynn: I'm in your hands. I just want to deal with it in the proper manner.

The Vice-Chair: My understanding here is that this is proposed as an amendment. It's been read as an amendment. We will vote on it as an amendment; then

we'll vote on the government motion as amended, if it passes.

So we'll take the amendment first. It's on page 68. Yes, Mr. Hardeman?

Mr. Hardeman: I'd just like to explain, if I could, Mr. Chairman. As we look at the original motion and the amendment, as I said, on the first two points, "an official plan and a bylaw passed under subsection (2) that both contain provisions relating to such matters are in effect in the municipality"—that is in fact in the government motion.

The other one, "the building is a designated heritage building or in a designated heritage conservation district," again is part of the government motion.

"The design details do not include specific materials that must be used" I think is the one that is not in the government motion. But the intent of the government motion is to achieve a goal, an end result that we have consistent conformity within the building district or within the streetscape, so the municipality can design not only the architectural significance of a community but they can designate or mandate the looks of a community.

If you look at (iii), I think a lot of our developers were concerned about that, that the municipality would designate a type of material. If the developers can achieve a certain look and façade that the municipality supports, why would the municipality be concerned what type of material was used to do that? I don't think they should be allowed to say, "You must do it with glass or you must do it with plastic." If you can achieve the goal of the municipality in the streetscape that they're looking for, then you should be able to do that with the material that you can use, provided you meet the end result. That's why I think it's important that that part of it be included.

For the rest, it is an identical amendment to the government-proposed resolution. I think it's almost to the point of what we would call a friendly amendment, because the end result of this amendment, though it clarifies what we want to do, does not change the results that the government hopes to achieve with the amendment that's before us. I would ask for and fully expect that the government will see the wisdom of this and support this amendment because it will improve this section of the bill.

The Vice-Chair: Mr. Sergio.

Mr. Sergio: I'm sorry, I was just out for a short break. Can we have staff see how the clauses that Mr. Hardeman wants to incorporate into the government motion would fit or if they would create a problem for the government motion? Can we ask staff? I wasn't here.

Mr. Glenn: Ron Glenn, provincial planning and environmental services, Ministry of Municipal Affairs and Housing. Motion 68, in breaking it down, really takes the site plan control and the applicability of design elements only to heritage-designated buildings and heritage-designated areas under the Ontario Heritage Act. Contrary, the motion under number 67 allows municipalities, if established in their official plans, to apply

external design controls to all areas in a municipality if they designate them and include them in a bylaw. So they are a little bit different within those two provisions.

The third provision, dealing with design materials: There is a provision existing in Bill 51 that talks about the types of materials and construction standards in the bill today. There are provisions under the building code that talk about types of materials and standards for construction that do put a prohibition already on detailing the construction standards or the type of materials. That would be under the building code.

Mr. Sergio: So, substantive change.

Mr. Hardeman: To the staff, the designation of type of materials in the building code would in no way relate to Bill 51.

Mr. Glenn: No, it's separate under the building code altogether.

Mr. Hardeman: I guess I'd like your opinion on (iii). Designating a type of building material in order to achieve architectural or colour or type of façade would not be covered in the building code. This would be beyond the building code. The way the government's motion is, it would be beyond the building code, where they could ask for glass instead of plastic.

Mr. Glenn: If it's a decorative nature, it would be beyond the building code.

Mr. Hardeman: I think that's really why—to the government members—I put that in, that they wouldn't designate the type of material, only the façade or the end result that they require, as opposed to telling them, "It must be built with this material." We could very well have the mayor have a company that produces a certain product and we could have council demanding that every developer use his product because that's what they wanted to see, even though it looks exactly the same as the competitor's product. I don't think that that's the right way to pass legislation. That's why I think it's important to the members of the government that we include that, that they can describe or prescribe a streetscape as its authentic look and as its structural nature, which the building code does, but cannot say which material you must use to get there.

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Mr. Glenn: I think we have to remember that for a municipality to be able to utilize this tool, they must also have official plan policies in place that set out the broad parameters on how they're going to deal with it, but they must also have a bylaw in place that sets out the specifics of how they're going to apply it, so that it doesn't become an ad hoc, site-by-site application, so that there is a standard set across the municipality.

The Vice-Chair: Mr. Prue.

Mr. Prue: Yes, just a question in terms of heritage buildings because I want to understand how this Conservative motion relates. I was, for many years, a member of the Toronto Historical Board. There was a huge debate all the time when buildings were being fixed up on whether or not they should try to use more or less original materials. So you would use single-pane glass as

opposed to double or triple; you would use wooden outside pieces as opposed to plastic, even though the wood might rot. Is this going to in any way change the historical designations to use original types of materials, on the one hand, but, on the other, is it going to in any way make it more difficult to get energy conservation and like measures by using materials which literally are no longer used?

I'm just wondering how this works in. I understand the conundrum, but I don't understand how this is going to impact.

Mr. Glenn: I think from the standpoint of the impact to the community, the Ontario Heritage Act and the requirements around building preservation still remain. This also talks under the site plan provisions of now talking about the other buildings in the area that may not be designated as heritage buildings, about maintaining community character and community streetscape. There's a blended fashion, so that you don't have a heritage area with a building that has been preserved and that's what you want to see on your street and the building next to it now becomes an art deco building. Now the community could set out how that streetscape is going to go, how new buildings or redevelopment fits in.

Mr. Prue: That's what the Conservative motion does?

Mr. Glenn: That's correct.

Mr. Prue: Okay, thank you.

The Vice-Chair: I think we've had a good debate. Thank you for your assistance. We will vote on the amendment. That's page 68.

Ms. MacLeod: Could we have a recorded vote?

Ayes

Hardeman, MacLeod, Prue.

Nays

Flynn, Lalonde, Mossop, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Now we will vote on the government motion on page 67.

Mr. Hardeman: Recorded vote.

Ayes

Flynn, Lalonde, Mossop, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The motion is carried.

Now we go to page 69, a government motion.

Mr. Lalonde: I move that section 15 of the bill be amended by adding the following subsection:

"(3.1) Clause 41(7)(a) of the act is amended by adding the following paragraph:

"4.1 Facilities designed to have regard for accessibility for persons with disabilities."

The Vice-Chair: Any discussion?

Mr. Hardeman: Again, I'd like an explanation of what this does for the disabled.

Mr. Sergio: Very simply, this motion provides that a municipality may require that facilities must be designed to have regard for accessibility for persons with disabilities as part of the site plan approval.

The Vice-Chair: Anything further? You've heard the motion. All in favour? Opposed? The motion is carried.

Page 70, a government motion.

Mr. Flynn: I move that section 15 of the bill be amended by adding the following subsection:

"(4.1) Clause 41(8)(a) of the act is amended by adding the following subclause:

"(v) where the land abuts a highway under the jurisdiction of the upper-tier municipality, facilities designed to have regard for accessibility for persons with disabilities;"

The Vice-Chair: Thank you. Any discussion? All in favour? Opposed? The motion is carried.

Page 71, an NDP motion.

Mr. Prue: Okay, not out of order this time, because it's a different section. You can vote against it if you want. I fully expect that.

I move that section 15 of the bill be amended by adding the following subsection:

"(4.1) Section 41 of the act is amended by adding the following subsection:

"Exception, portable classrooms

"(8.1) Subsections (7) and (8) do not apply if the development is the placement of portable classrooms by a district school board."

What this means is simply that the municipality would have some kind of option in assisting the board where the portables were located.

The Vice-Chair: Any further discussion?

Mr. Hardeman: Thank you very much, Mr. Chairman. I'm sorry for being somewhat out of my chair at the time when you recognized me.

The Vice-Chair: You're in it now, and I recognize you.

Mr. Hardeman: I will be supporting this amendment. Again, I think it's very important to recognize that the school presentations did not want to be excluded from the process. They did not want to push the municipality out of the process of telling or helping them to please the community or address the community's concerns through the process of site planning. They were just concerned that we didn't pass a law that would make it, first of all, almost impossible to locate a portable anywhere and, secondly, that they couldn't use the present portables because the municipalities, going back to the motion that was just passed, could actually tell them what colour they had to be and what material had to be on the outside of them. Now, with the amendment that was just passed, they can do that. They can all of a sudden say, "All these school portables are covered with tin, but the city has

decided we are no longer going to allow tin portables in our jurisdiction.” So they would have to get all different portables before they could site them on the school site. What they wanted was the status quo, which is that the school site is zoned for educational purposes; we have a right to put portables there so we can educate our students. The only problem we have is that we have certain setbacks we must maintain. Beyond that, we have the city and the city planners to help us decide where best to site them within the context of our site to have the greatest positive impact on the community that we’re serving. So I think this is really doing that, allowing them to carry on not only with the portables that are presently there but also to site future portables under the same criteria that they’ve used so far. Not one of the school boards came in complaining that the present structure wasn’t working. They just said they didn’t want to inhibit it by putting more restrictions on it and then not being able to site them.

I support this motion, and I would suggest the government support it too in order to not only address the problems of the district school boards but to also help address the concerns that municipalities will have when they no longer have any say where on the site the portables go.

The Vice-Chair: Thank you. Any further discussion?

Mr. Prue: Recorded vote.

Ayes

Hardeman, MacLeod, Prue.

Nays

Lalonde, Mossop, Rinaldi, Sergio.

The Vice-Chair: The motion is lost.

Next we have, on page 72, a government motion.

Ms. Mossop: I move that subsection 41(16) of the Planning Act, as set out in subsection 15(7) of the bill, be struck out and the following substituted:

“City of Toronto

“(16) This section does not apply to the city of Toronto, except for subsection (1.1), paragraph 1 of subsection (4), subparagraph 2(f) of subsection (4) and paragraph 4.1 of clause (7)(a), which provisions apply with necessary modifications.”

The Vice-Chair: Thank you. Any comments?

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Mr. Hardeman: I would like to know what the sections mean that do not apply to the city of Toronto but do to the rest of the province, and what impact that will have on the Planning Act as it relates to all municipalities when you take the largest municipality out.

Mr. Sergio: I think now it makes it province-wide instead of strictly the city of Toronto. Now it’s province-wide.

Mr. Hardeman: It is province-wide?

Mr. Sergio: Province-wide, yes.

Mr. Hardeman: Yes, but why the exceptions for Toronto? This doesn’t apply to Toronto, so that doesn’t make it province-wide anymore. Why is that being done?

Mr. Sergio: I believe that it applies for the city of Toronto already. They already have that within the City of Toronto Act.

Mr. Hardeman: The wording is kind of suggesting the other way: “This section does not apply to the city of Toronto.” That’s kind of a negative to saying we’re going to make it universal.

The Vice-Chair: Are we interested in getting a staff opinion?

Mr. Sergio: If staff wants to clarify that.

Mr. Shachter: Good afternoon. Irvin Shachter, legal services branch, municipal affairs and housing, still.

Ms. Mossop: Good afternoon.

Ms. MacLeod: Your nameplate will be ready soon.

Mr. Shachter: Well, thank you, but no, please don’t.

Currently, subsection 41(16) excludes section 41 site plan provisions from applying to the city of Toronto because section 114 of the City of Toronto Act has its own site plan control provisions.

In order for the provisions you have been discussing today—portable classrooms and the three or four accessibility provisions—to apply to the city of Toronto also so that everybody across the province is on the same level playing field, what has to happen is that the section that says, “This section does not apply to the city of Toronto” has to be amended to say “except for” those sections that we’re referring to, which are portable classroom provisions and the three or four accessibility provisions.

Mr. Hardeman: The parliamentary assistant was right.

Mr. Rinaldi: Always.

Mr. Hardeman: And we commend him for it, always. It doesn’t matter where we have to go to get there, but the parliamentary assistant is right.

The question then becomes, to the parliamentary assistant, has the ministry been in contact with the city of Toronto to say, “Last week or last month we gave you total control of the site plan, save and except that this week we decided to take some of it away from you”? Because in all the things we’ve heard about the portable sitings, until this law came along—and from the explanation I’ve just heard, this would not apply to the city, so site plan control would have applied in the city of Toronto; now it doesn’t.

Mr. Shachter: If I can interrupt a second just to clarify, what would happen is, this provision doesn’t take away the site plan from the city of Toronto. If we remember, there are now two parallel systems in Ontario. You have site plan control within the city of Toronto and site plan control everywhere else in the province, under the Planning Act. The Planning Act is proposed to be amended to include a number of provisions relating to portable classrooms, so those matters would then be under the purview of site plan control by the various municipalities. At the present time, without a provision that makes those provisions apply to the city of Toronto,

the portable classroom provisions would not apply and neither would the accessibility provisions, but the city of Toronto would still be in control of the site plan control process within the city of Toronto.

What it does do, though—it does mean that the city of Toronto will have site plan control provisions in the City of Toronto Act and will now have additional site plan control provisions in the Planning Act.

Mr. Hardeman: Let me ask the legal branch: If this amendment was not passed, would the city of Toronto then be able to have site plan control on siting new portables?

Mr. Shachter: Yes. The provisions of one (1.1) would not apply.

Mr. Hardeman: This amendment is taking that away from them. They cannot use site plan control to site new portables.

Mr. Shachter: If I could just restate what you've said to apply it back to the provision, what this amendment is proposing to do is to make the provisions of 41(1.1), which is the portable classroom exemption, apply to the city of Toronto.

Mr. Hardeman: Just going back to the city of Toronto, up until now, without this amendment—if for some reason the call of nature came all of a sudden to all the government side and there were only two votes over there and there were three over here, and this amendment were to fail, then the city of Toronto, with everything that's presently passed, would still have site plan control over new portables in the city of Toronto.

Mr. Shachter: That's correct. You'd have a situation where the city of Toronto would have control over portable classrooms on school sites that existed as of January 1, 2007, and would not be able to have any control over accessibility for persons with physical disabilities.

Mr. Hardeman: It's not unreasonable that the mayor of Toronto, until this section is passed, would assume, "Don't worry. We're not covered by the site plan control restrictions for the rest of the province because we have our own site plan, so if they're going to impose a restriction on site plan control in the province, that's okay because we control our own." Thursday morning he's going to wake up and find out that he has been lumped back in the province for the restriction. Is that right?

Mr. Shachter: I can't really speak to the mayor's assumptions about this particular matter. I can only repeat what I've indicated before, that—

Mr. Hardeman: This section is what puts Toronto back in the regime of the total province. As the parliamentary assistant says, this makes it uniform. The City of Toronto Act made site plan un-uniform and this makes school location sites uniform again.

Mr. Sergio: Consistent throughout the province. Let me add this in answer to your question. If we were to take anything away from the city of Toronto with respect to the proposed legislation, the mayor of the city of Toronto would be here or on to the Premier or to the minister.

Mr. Hardeman: Mr. Chair, surely the parliamentary assistant isn't suggesting that both Hazel and the mayor of Toronto were notified of these amendments before I was. He doesn't know they exist yet, does he?

Mr. Sergio: I have no idea. The fact is that the city of Toronto and the rest of the province will be allowed to perform within the same laws with respect to new portables after January 1.

Mr. Hardeman: But no site plan for portable classrooms. Neither one has that now after this.

Mr. Sergio: That's right.

The Vice-Chair: I will call the vote.

Mr. Hardeman: Recorded.

Ayes

Lalonde, Mossop, Rinaldi, Sergio.

Nays

Hardeman, MacLeod, Prue.

The Vice-Chair: The motion is carried.

We are at the end of section 15. Shall section 15, as amended, carry? Those in favour? Opposed? Carried.

Being that we are very close to the 5 o'clock time period, I do want to say that I appreciate your patience with me as the Chair here today. It was certainly a learning experience for me, and I do want to thank staff for your input and support. It was much appreciated.

We will adjourn—

Mr. Hardeman: Mr. Chair, before we adjourn, I just wanted to say we've had many Chairs, but there's none I want to trade you for.

The Vice-Chair: This hearing adjourns until 10 tomorrow morning.

The committee adjourned at 1658.



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Ms. Jennifer F. Mossop (Stoney Creek L)

Mr. Michael Prue (Beaches–East York / Beaches–York-Est ND)

Mr. Mario Sergio (York West / York-Ouest L)

Also taking part / Autres participants et participantes

Ministry of Municipal Affairs and Housing:

Mr. Irvin Shachter, senior counsel, planning law section;

Mr. Ken Petersen, manager, and Mr. Ron Glenn, acting manager,
provincial planning and environmental services branch

Clerk / Greffière

Ms. Susan Sourial

Staff / Personnel

Ms. Lucinda Mifsud, legislative counsel,

Ministry of the Attorney General



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Wednesday 30 August 2006

Journal des débats (Hansard)

Mercredi 30 août 2006

Standing committee on general government

Planning and Conservation
Land Statute Law
Amendment Act, 2006

Comité permanent des affaires gouvernementales

Loi de 2006 modifiant des lois
en ce qui a trait à l'aménagement
du territoire et aux terres
protégées

Chair: Linda Jeffrey
Clerk: Susan Sourial

Présidente : Linda Jeffrey
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 30 August 2006

Mercredi 30 août 2006

*The committee met at 1005 in room 151.*PLANNING AND CONSERVATION
LAND STATUTE LAW
AMENDMENT ACT, 2006
LOI DE 2006 MODIFIANT DES LOIS
EN CE QUI A TRAIT À L'AMÉNAGEMENT
DU TERRITOIRE ET AUX TERRES
PROTÉGÉES

Bill 51, An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts / Projet de loi 51, Loi modifiant la Loi sur l'aménagement du territoire et la Loi sur les terres protégées et apportant des modifications connexes à d'autres lois.

The Chair (Mrs. Linda Jeffrey): Good morning. The standing committee on general government is called to order. We're here today to resume clause-by-clause consideration of Bill 51, An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts. We're in clause-by-clause consideration and yesterday we left off, I understand, at section 15. We're now on section 16 and that is a government motion. Mr. Rinaldi.

Mr. Lou Rinaldi (Northumberland): I move that subsection 42(6.1) of the Planning Act, as set out in subsection 16(1) of the bill, be amended by striking out "on the land" and substituting "on the land proposed for development or redevelopment".

The Chair: Any comments or questions? All those in favour of the amendment? All those opposed? It's carried.

The next motion is a government motion, Mr. Lalonde.

Mr. Jean-Marc Lalonde (Glengarry-Prescott-Russell): I move that subsection 42(6.2) of the Planning Act, as set out in subsection 16(1) of the bill, be struck out and the following substituted:

"Redevelopment, reduction of payment

"(6.2) If land in a local municipality is proposed for redevelopment, a part of the land meets sustainability criteria set out in the official plan and the conditions set out in subsection (6.2.1) are met, the council shall reduce the amount of any payment required under subsection (6) by the value of that part.

"Same

"(6.2.1) The conditions mentioned in subsection (6.2) are:

"1. The official plan contains policies relating to the reduction of payments required under subsection (6).

"2. No land is available to be conveyed for park or other public recreational purposes under this section."

The Chair: Any comments or questions?

Mr. Ernie Hardeman (Oxford): I wonder if I could get a brief explanation of what this does as it relates to changing the present act.

Mr. Mario Sergio (York West): I guess this is where the official plan allows the local municipality to make some changes with respect to the in-lieu money for parklands. Municipalities have that option where the official plan allows a municipality to do that as part of the conditions of approval.

Mr. Hardeman: It would seem to me that under the present Planning Act, that's already allowed. In fact, they get their parkland in lieu and they can take cash payment in lieu or trade it for something else. I wonder what the reason for this amendment is, as opposed to changing what was in there before.

Mr. Sergio: I guess this specifies the reduction: instead of all of the lands, part of the land, part of the parklands where there is a sustainable benefit for the municipality to do so.

The Chair: Can I go to Mr. Prue or do you want to continue with your question?

Mr. Hardeman: I'd go on in the same vein, Madam Chair, just for a moment. I still don't understand. If the land for redevelopment, or part of the land, meets substantial criteria in the official plan and conditions set out are met, "the council shall reduce the amount of any payment required under subsection (6)." It would seem to me that that implies that they're forcing the council to do something that they would not necessarily have agreed to and I just wondered why that's being put in, or if that's already in the present act where, as we've done with a number of other situations, we've just taken the total section out and put a new section in where a lot of it stays the same. Maybe we could have the legal branch explain whether there is a—

Mr. Sergio: If you want to go that route, that's fine. Staff is here for that, Madam Chair.

The Chair: Good morning. If you could—

Mr. Hardeman: You're back. I'm sure you will introduce yourself.

Mr. Irvin Shachter: I'm Irvin Shachter, legal services branch, Municipal Affairs and Housing.

The Chair: It sounds like they know you well.

Mr. Shachter: I'm not sure whether that's a good or bad thing. Thank you, Madam Chair.

Just to clarify, it is a situation where the whole of this section has been taken out of the bill and put back in again, but the section does contemplate that a municipality would be giving a credit for the cash-in-lieu payment otherwise required, if certain conditions are met. The motion, though, instead of allowing the credit to be in the discretion of the municipality—you'll notice the bill talks about "may"; the motion provides that it "shall." So if the conditions are met, the municipality has no discretion as to whether to grant the credit or not.

Mr. Hardeman: To make sure I understand it, I was right, then, in my question to suggest that, really, the change in this section is to mandate that the municipality must do it rather than that they may do it.

Mr. Shachter: That's correct.

The Chair: Mr. Prue.

Mr. Michael Prue (Beaches–East York): Don't go. I struggle to try to figure out the difference between this amendment and what was in the original bill. Can you tell me? I couldn't even find the change of word.

1010

Mr. Shachter: That's correct. If you match the original Bill 51 provisions with the provision of the motion, the substantial change is the change from "may" to "shall." There are wording changes in order to make this section read better, but that's not substantive. The only substantive change is the mandatory requirement for the credit.

Mr. Prue: So the change of this in the government's motion is that they've changed the "may" to "shall."

Mr. Shachter: That's correct.

Mr. Prue: Then I would like to ask the parliamentary assistant why.

Mr. Sergio: The minister says that perhaps this is the way to go and it would send some direction to local municipalities.

Mr. Prue: So this is another thing taking away municipalities' rights that they've had in the past.

Mr. Sergio: You may construe it as such but I don't think so.

Mr. Prue: Before, they would have a debate; before, the council would determine whether to take the money or the cash in lieu, or the parkland. They would determine whether it was part of the deal, and now they have no option. Now they do what you tell them.

Mr. Sergio: Madam Chair, may I bring in Mr. Shachter again? I believe that the local municipalities can consider in lieu of and how much. Can you please explain again for the benefit of Mr. Prue?

Mr. Shachter: The current process as it exists now, as you may be aware, is that when there's a development that contemplates residential, for example, a municipality may take up to 5% of the land or the value of the land, which is cash in lieu. That's what is currently in the

Planning Act. Bill 51 would provide for discretion for a municipality to give a credit against the money that would otherwise be required to be paid under cash in lieu, should the conditions relating to sustainability be met. The motion would then go one step further and would require, in those situations set out in Bill 51 where cash in lieu is required to be paid and credit is being considered, that that credit shall be given.

Just to let you know as well, the provisions relating to this matter have to also be in the official plan, just to clarify.

The Chair: Does that answer your question, Mr. Prue?

Mr. Prue: I guess, but I think Mr. Hardeman has another question.

Mr. Hardeman: I think, Madam Chair, I'm going to ask the legal branch to stay, because I thought I totally understood this amendment until your last explanation. I wonder if you could explain to me what would constitute a credit to the developer. You talked about the granting of the parkland or there could be 5% in lieu of parkland. What would be a credit to the developer that the municipality would have to accept?

Mr. Shachter: I would be speculating because it would be based on official plan policies that a municipality would have to put in place. But for example you could have official plan policies that say that if you have a certain type of sustainability—let's say you have green roofs, to use an example—because you don't have any parkland otherwise that you can give but you meet the sustainability criteria, a municipality could say, "Green roofs are worth a 2% discount" or something such as that.

Without wanting to say, "This is what municipalities will do," my sense of how this might work or how this could work is that you could actually have almost a scale of credits set out in the official plan policy. For example, a developer who was developing who didn't have land available to give for parkland dedication, who knew they'd have to do cash in lieu of parkland, would know, if they met these certain criteria, that they would be receiving a credit from the amount otherwise paid. Does that clarify how that would work?

Mr. Hardeman: I accept it as fairly clear, except that I'm not sure I understand how it would work. First of all, the official plan sets the parameters of the sustainability qualities that are worth credits. So they say that if you built, as you mentioned, green roofs, that will take up 2% of the parkland allocation; that would be a credit. So now you only have to come up with the 3%, because we have said in the official plan that a green roof would contribute 2% of that parkland dedication. Is that right?

Mr. Shachter: That's correct, or whatever the municipalities determine. As you know, section 42 does say a 5% maximum. You don't have to—

Mr. Hardeman: I just want to go a little further, whether this would work when it says that they "shall." I'm concerned about the implications of that. Presently, you are obligated in subdivisions to dedicate 5% parkland, or they can negotiate a dedication, cash or

otherwise, different from that. The act is quite clear that it's 5% of the land value, based on the undeveloped land at the time of approval. No one settles for that. Everybody gets more because they negotiate and they don't have to accept anything less. They just say, "Give us the lot and then we'll sell it back when the whole subdivision is developed and it will be worth the full price." Who decides under this, with the word "shall," whether in fact there is going to be a dedication of land or there's going to be cash in lieu?

Mr. Shachter: The answer to the question actually occurs before you get to the issue of "shall." The reason I say that is that usually it's a discussion between the municipality and the proponent, the developer. There will be a determination of whether there is land available in order to make it. As you know, in many cases the 5% may take so much land that there isn't a viable development parcel left, so the proponent may wish to offer cash in lieu. Sometimes the municipality would like to have cash in order to be able to develop parkland somewhere else, other than in that particular location. So that really wouldn't be a "shall" situation. That would be something that would be determined between the two parties. The "shall" situation only works, then, if the parties have said, or there's been some sort of determination, that it shall be cash in lieu of parkland. If a municipality has in their official plan, through an amendment, put policies in relating to this credit situation, a reduction in the payment otherwise due, and if a proponent meets those conditions, then the credit shall be given. It's actually a two-step process.

Mr. Hardeman: What would encourage a municipality to put—we'll use the green roof example again—that in their bylaw when at any point in time, even if it's not in it, they can negotiate it? Now we're changing this word, and that seemed to work for me when the word was "may." But when you change this to "shall," why would they ever put that in their official plan? If they don't put it in, they may still negotiate it, but if they put it in, they're bound by it. It just doesn't make sense to take this approach. This will inhibit any municipality from putting it in their plan, because then they're locked in; they must give that in every case.

Mr. Shachter: I wish I could assist you with the answer to that, but unfortunately it's not a legal answer. It's really something a municipality will have to determine if it's most appropriate in any given circumstance.

Mr. Hardeman: If I could, just one step further on exactly that same scenario from a legal perspective: Does changing the word to "shall" make it so that they can no longer make the decision on individual applications, whereas if they left the word as "may," they could make it on individual applications, with exactly the same result in both, legally?

Mr. Shachter: I think the answer would be generally yes, but let me just clarify it, if I can, just to go back. I will try. The "shall" is directory. It means that if a proponent meets the conditions that a municipality has set out in the official plan policy—for example, the muni-

pality has gone through the official plan process, they've amended it and they have the policies. If somebody meets those conditions, then, yes, you are correct: There is no discretion; that credit should be given. As to whether that disentitles any discussion aside from that, I can't say.

1020

Mr. Hardeman: Madam Chair, I support the word "shall."

Mr. Sergio: After all this?

Mr. Hardeman: After all this, but I would point out that the effect of this amendment is going to cause the sustainability of development to not appear in anyone's official plan and I think that's bad news. The effect of this is going to be totally different than the purpose it's being put there for. I think we will see that no municipality will put sustainability criteria in their official plan. They will negotiate them all after the fact and then they will never have to use the word "shall" in order to negotiate their subdivision agreements.

Mr. Sergio: I usually don't do this, Madam Chair, but—Mr. Shachter, just forgive me. Subsection (6.2.1) says, "The conditions mentioned in subsection (6.2) are...." These are the conditions under which the municipality would be obliged to do certain things; that's where the "shall" comes in. One of the conditions is in paragraph 2: "No land is available to be conveyed for park or other public recreational purposes under this section." Is this where the "shall" would come in and say, if there is no parkland to be given, then money or transfer shall take the place of the parklands?

Mr. Shachter: As I indicated before, it's one of the conditions that would have to be met. Paragraph 2 is, "No land is available to be conveyed," and then paragraph 1 is actually a condition but it will contain a number of subconditions; it will be the official plan policy. So once those are met, then yes, "shall" does require that that credit be given.

The Chair: Okay. Mr. Hardeman?

He was so happy a minute ago.

Mr. Hardeman: It seems every answer brings up more—

Mr. Sergio: He was ready to support it before.

The Chair: You tried to clarify that.

Mr. Hardeman: I need some clarification. My question is, if there is land available but the municipality has in their official plan that they give credit for sustainable development, for attributes to sustainable development, are you suggesting that, provided there is land available, the municipality would not be obligated to give that developer the credit for the sustainable development?

Mr. Shachter: The municipality could give the credit for that sustainable development outside of these provisions. For example, if you have land available but there are cash-in-lieu policies that provide for sustainable development and credits, you could still do that. But because you have to have no land available, it would not come under (6.2.1).

Mr. Hardeman: No, but my development has all kinds of land; but I can build another house on it, so I would like to keep it, as a developer. They have in the official plan that by building the green roof, I get a 2% reduction in the dedication of parkland. Are you suggesting that because there was land available, I could build the green roof but they don't have to give me the credit?

Mr. Shachter: I don't want to confuse matters, but can I just suggest that if it's a situation where you have, for example, what's known as greenfield development, usually there is land available to be conveyed in greenfield development. In that type of circumstance, this provision would not apply because there would be land available to be conveyed.

If in a circumstance where it may be a decision that you're making that land would be available to be conveyed but you'd like to use it for further intensity of development, or for whatever reason you and the municipality decide you're going to pay cash in lieu rather than land, it wouldn't come within this particular provision.

Mr. Hardeman: If the official plan says that we give a credit for the sustainability development, the single attributes—and we'll use the green roof again—2%. In a greenfield development, I want to build a development and I want to save some of the land—I want to minimize the use of the land. I'm going to build the green roof. The official plan says that that means I get a 2% reduction in the dedication. But you're suggesting that the municipality, because I have land available, doesn't have to give me the 2% credit?

Mr. Shachter: Because the official plan says they would give you the 2% credit, you would get it. My point is that that would be outside of this particular provision.

What I would conceive happening is, you'll have an official plan policy that says there has to be no land available; cash in lieu, then, would be credited on certain policies that are set out. But if land is available, that would take it outside of this provision. So you could, as you said, have those policies. There's nothing today stopping the municipality from putting those policies in place in their official plan document. So if you're in a municipality and you have—to use your example, a green roof would provide a 2% credit from the cash otherwise payable; then that's what the parties would follow.

The Chair: Any further comments or questions? Mr. Prue.

Mr. Prue: Just a comment, and I'm probably going to be the odd man out, since Mr. Hardeman has already indicated his support. I cannot support this. We had municipalities come here, and they came here on what was existing in Bill 51. There has been absolutely no discussion that I am aware of with any municipalities or with AMO on this provision that is going to circumscribe their role. They have an expectation, I think, from this government. The Premier stands up at every opportunity, talking about the partnership with municipalities, that they are a mature level of government themselves, and all

of a sudden here is a provision that takes away rights they have enjoyed literally since Confederation.

People over there were mayors and councillors. People over here were mayors and councillors. We all know the negotiation that takes place. That's not going to take place anymore. I know they have to put it in their official plan, and Mr. Hardeman is right: They're not going to. But if they do, that whole negotiation with development interests is going to be taken away. Without the approval of somebody here from AMO telling me that they think this is a good idea, I certainly am not going to support it, because there has been zero consultation on this particular motion. It was not contained in the first draft. It said "may." It was just a continuation of everything you've ever done. And right today, there you go, you got a shell. Quite frankly, I'm not going to be putting my hand up to it. And a recorded vote, please.

The Chair: Mr. Hardeman.

Mr. Hardeman: Well, Madam Chair, I think Mr. Prue almost changed my mind here. My support is not that I think this is good idea; I think this is a bad amendment. I think it's bad to change the word. The reason I support it is that if the municipality has an official plan that says you get a 2% credit from your parkland dedication for building a green roof, then I think the municipality should be obligated to pay up for each and every one. It shouldn't be that they may give you the credit or they may not give you the credit. In fairness to everyone, they should get the credit.

But I have a real problem as to what impact this will have on municipalities putting sustainability factors in their official plan. Why would they do it? Because if they don't do it, they can negotiate all of them. They may negotiate them or they may give them 1%, they may give them half a per cent, they may give them nothing at all. They can do that. But if they put it in the plan, then they must give them what they say they do, under this resolution.

So I really don't believe that this is going to have any impact on increasing sustainable development. I think it is going to be fair that everyone who does it after the bylaw says so—everyone that does it gets equal treatment, being that the municipality must negotiate that percentage. Whatever they say, they must pay that out to everyone involved. So that would be the only reason I support it.

The Chair: All those in favour of the motion? A recorded vote has been requested.

Ayes

Brownell, Hardeman, Lalonde, MacLeod, Rinaldi, Sergio.

Nays

Prue.

The Chair: That's carried.

Shall section 16, as amended, carry? All those in favour? All those opposed? That's carried.

Section 17: government motion. Mr. Brownell.

Mr. Jim Brownell (Stormont-Dundas-Charlottenburgh): I move that section 17 of the bill be amended by adding the following subsections:

“(1.1) Section 45 of the act is amended by adding the following subsection:

“Restriction

“(1.1) Subsection (1) does not allow the committee to authorize a minor variance from conditions imposed under subsection 34(16) of this act or under subsection 113(2) of the City of Toronto Act, 2006.

“(1.2) Section 45 of the act is amended by adding the following subsections:

“Agreement re terms and conditions

“(9.1) If the committee imposes terms and conditions under subsection (9), it may also require the owner of the land to enter into one or more agreements with the municipality dealing with some or all of the terms and conditions, and in that case the requirement shall be set out in the decision.

“Registration of agreement

“(9.2) An agreement entered into under subsection (9.1) may be registered against the land to which it applies and the municipality is entitled to enforce the agreement against the owner and, subject to the Registry Act and the Land Titles Act, against any and all subsequent owners of the land.

“(1.3) Subsection 45(17) of the act is amended by striking out ‘on its own motion or on the motion of any party’ in the portion before clause (a) and substituting ‘on its own initiative or on the motion of any party’”.

1030

The Chair: Any comments or questions? Ms. MacLeod.

Ms. Lisa MacLeod (Nepean-Carleton): I'm just wondering if they can explain the change of the last wording with respect to registration.

The Chair: Mr. Sergio.

Mr. Sergio: There are a couple of things, Madam Chair. It deal mainly with decisions by the committee of adjustment which restrict them in dealing with and making or approving conditions with respect to zoning, and further, that minor variances may be now registered against the land on which they apply.

The Chair: Mr. Prue.

Mr. Prue: It's probably not all that relevant, but I'm kind of curious, in terms of the registration of the agreement—it's “subject to the Registry Act and the Land Titles Act, against any and all subsequent owners of the land.” There's been a spate of people who have had their houses stolen out from underneath them, and the law quite clearly says that somebody who obtained it illegally, without the bank doing due diligence, is now the owner. Are they subject to it as well?

Mr. Sergio: That's a different field, Mr. Prue.

Mr. Prue: I'm not sure. I just need to know, because it's—

Mr. Sergio: You're talking scams with respect to planning and zoning. That's a totally different issue.

Mr. Prue: No, no. It says it's “against any and all subsequent owners.” Does that include owners who may not have come by it in a normal method?

Mr. Sergio: You want to ask a technical question? I have given my answer to you. Unfortunately, these scams do happen, but an owner is an owner, and that's more of a legal entity.

Mr. Prue: I take it then that somebody who obtained the house by way of a scam has to—

Mr. Sergio: There is a legal recourse, a legal process to follow.

The Chair: Do you want staff to try to attempt to answer that, Mr. Prue?

Mr. Prue: I just need to make sure that they are subject to the same as somebody who owned the house in a normal way. I understand, in the normal way it's a covenant, it follows—

Mr. Sergio: We're dealing with the lands—

Mr. Prue: I'm just wondering, because it was on the front page of the paper two days ago about the old man in Toronto. We know there are other cases. There are three or four pending before the court. Is this enforceable on them?

The Chair: Can I ask, are you equipped to answer that question or not? Or is that something you have to get back to the member on?

Mr. Shachter: I think, Madam Chair, to try to respond to the question to assist, first of all, it is a standard clause. It's required in order for agreements to be registered on title. The registrar requires that there be a statutory requirement. Does it bind future owners? It does bind future owners. It doesn't speak to how property is acquired. What it means when it says it binds future owners, as you may know, is it continues to stay on title no matter how the land is transferred or no matter how subsequent individuals acquire the land.

Mr. Prue: That's all I wanted to know. It binds them even if they got it in some way that is not particularly kosher.

The Chair: Mr. Hardeman.

Mr. Hardeman: Yes, it's on that same topic. My understanding is that the story in the paper, if it's relevant, was the scam with the seller, not the buyer. The title that the buyer bought is the title with whatever lien was on it.

Mr. Prue: Yes, but I just wanted to make sure they were bound. Okay.

Mr. Hardeman: Yes. I think they were, and that's why it's so difficult in getting it back to the rightful owner, because the present owner had a legitimate deal. It's just that it was a forged ownership of the seller, not the buyer.

The Chair: Any further comments or questions on this motion? Seeing none, all those in favour? All those opposed? That's carried.

Shall section 17, as amended, carry? All those in favour? All those opposed? That's carried.

Government motion. Mr. Rinaldi.

Mr. Rinaldi: I move that section 18 of the bill be amended by adding the following subsection:

“(0.1) Subsection 47(12.1) of the act is amended by striking out ‘on its own motion or on the motion of any party’ in the portion before clause (a) and substituting ‘on its own initiative or on the motion of any party’”.

The Chair: Comments or questions? Seeing none, all those in favour of the motion? All those opposed? That’s carried.

Shall section 18, as amended, carry? All those in favour? All those opposed? That’s carried.

There are no changes to sections 19 and 20. Shall those sections carry? All those in favour? All those opposed? That’s carried.

Section 21. Ms. MacLeod.

Ms. MacLeod: I move that subsection 21(2) of the bill be amended by adding the following provision between subsections 51(18) and 51(19) of the Planning Act:

“Regulations

“(18.1) The minister may make regulations,

“(a) determining what constitutes a completed application for the purposes of this section; and

“(b) requiring that a pre-consultation process be established for the purposes of this section and setting out standards and rules for the carrying out of the pre-consultation process.”

We believe that this will make a better-defined application process and what constitutes a complete application. In essence, this proposed change will add time, money and additional process time to what is already overburdened by all three.

As written, the provision is vague and would allow municipalities to refuse to accept applications for rezoning, official plan amendments, plans of subdivision and consents unless the application is deemed complete according to the municipality standard. As a result, the right to appeal to the OMB does not begin until all requested information is submitted. There’s concern that the section could be abused and utilized as a delay tactic. That’s why we would like to bring that forward.

The Chair: Any further comments or questions?

Mr. Prue: I have a question of the mover. I’m just wondering here why you would want the minister to make regulations on documents that a municipality deems necessary in the building of anything, whether it be an apartment building, a condo, a single house or a subdivision. Are the municipalities not in a better place to understand on a case-by-case basis what might be needed on a big development? You might want shadowing of a tall building whereas you probably wouldn’t want that in a subdivision. I’m failing to understand why the minister would have to be involved, because certainly every development is different.

Ms. MacLeod: We felt this time the bill is opened and this would be creating more certainty in the process. Mr. Hardeman may want to expound upon that, but we believe this resolution will actually put more certainty into the bill.

Mr. Hardeman: I just wanted to add to that. It’s quite clear, and we had debate about this in a previous amendment, the words “shall” and “may.” This is a “may,” and I think is an area where—and I’m reasonably confident that it isn’t going to happen a great deal or that it may never happen, but if for whatever reason someone in their own documents does not set up a proper listing of what are the required documents for a completed application, they would say after two months of review, “Guess what? We need another study. We don’t have enough traffic studies to accommodate and review this application, so we need another study.” If someone was abusing the system, the minister may actually outline those two issues: what is considered a complete application in order for that time frame to start for appeal process purposes, and if they’re not holding sufficient public participation in it, the minister may by regulation have municipalities do more public consultation.

Mr. Prue: Okay, but this is what I’m failing to understand. If he makes regulations, it’s binding on 450 municipalities. You’re talking about one that may be throwing up a roadblock or two to a developer. Where I’m having some difficulties is, he makes a regulation, and say for instance the regulation says “a completed application” and leaves out “shadow study,” because nobody is contemplating that there’s going to be a 57-storey apartment building built in downtown Toronto, so there’s no shadow study. That means when a municipality asks for a shadow study, they can’t do it because the application’s already complete.

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Mr. Hardeman: That may be true, but the municipality can put that in. But if the municipality intentionally doesn’t put it in, doesn’t make the listing, and then requests those one piece at a time as opposed to telling the industry what is required for this application—I’m sure in my community a shadow study would not be part of a complete application, because we don’t have them.

Mr. Prue: Exactly.

Mr. Hardeman: Exactly, and if someone is abusing the system, the minister could change it so that they couldn’t.

Mr. Prue: Again, I don’t understand this. If the minister makes regulations, it’s binding on every single municipality. The regulations are existing, so they’re binding on every municipality. If I were to vote for this, it would say, “A completed application contains the following.” So if the municipality asks for anything that is not in there, anything at all, then they’re contrary to the regulation and therefore they can’t ask for it. That’s what this is going to do.

Mr. Sergio: May I add something, and then we’ll try and get on with it. I’m sure Mr. Hardeman is not suggesting that we take rights and powers away from local communities, local municipalities, with respect to requesting new information to support them in making their decision. I hope this is not the intent of Mr. Hardeman. Furthermore, as Mr. Hardeman has said, this would create severe disputes with respect to what

constitutes a complete application or an incomplete application. I believe again that this goes back to what we already discussed in previous motions, where we need all the information possible from both sides so council can make the best decision. So I would hope that this is the intent, to indeed provide all kinds of information so the best decision can be made. Further to the consultation, we have already dealt with it at length in previous motions as well.

Mr. Hardeman: I think if we go back to the consultation, particularly from the development industry, it was of great concern not how much would be in a complete application, but the timing of when they would be told what was required. There was a lot of concern that municipalities, in order to delay the process, may very well keep asking for another study and another study. This says—and that's why it's important that it is the word "may"—that if that was to happen, the minister may, by regulation, ask the municipality to prepare that document that is suggested. In another part of the act it says that the municipality may do that, but if they don't, this gives the minister the power to ask them to prepare their documents so they would know up front what a completed application looked like. I don't think it's that the minister would make uniform regulations across the province as to what a completed application is, but he could—

Mr. Prue: That's what it says.

Mr. Hardeman: The minister may by regulation instruct municipalities to do it.

The Chair: Can you finish with the clarification?

Mr. Hardeman: It doesn't say that; it doesn't have to. He can do that in any way he deems appropriate.

The Chair: This is a clarification, not a debate. Just so long as everybody understands, you're supposed to be going through the Chair for clarification of motions that are on the table, not debating them.

Mr. Prue: To the Chair: Does this say that the minister may make a regulation binding on a single municipality or does this include all municipalities if we vote for it?

The Chair: I think you're asking the mover that question, right?

Mr. Prue: You said I had to do it through the Chair.

The Chair: I'm just making sure that this isn't a debate that happens across the table, because we're going to be here all day. We have over 100 motions, and if we keep debating about the intent—you have something in front of you, and if you need clarification, we can go for clarification.

Mr. Prue: Please, if this passes, is this binding on all municipalities or can it, as it's worded—perhaps the lawyer can say. It seems to me that when the minister makes regulations, it's for everybody.

The Chair: Mr. Shachter? I have a feeling that you might want to just stay there for the morning, at least.

Mr. Shachter: Generally speaking—I didn't have an opportunity to look before the question, so I do apologize—regulations do apply across all of the province, but

sometimes there are provisions that say that regulations can be made specifically or generally, so that they could be made to address a specific situation. But you are correct: Generally speaking, regulations in many cases are intended to apply on a province-wide basis.

Mr. Prue: Is there anything in here that would make it specific to one instance? The wording seems very general to me: "The minister may make regulations." It doesn't say about any specific municipality or in individual cases; it says, "may make regulations." Is this a general provision?

Mr. Shachter: The provision that's currently before the committee is a general provision. I'm just checking to see if I can see something elsewhere in the Planning Act that would provide for the minister to be able to make regulations on a specific or a general basis.

I'm unable to see it, but without having an opportunity to really review it in a little bit more detail, I don't want to say definitively that the minister could not make regulations on a specific basis.

Mr. Prue: But the wording here, is this is a general basis?

Mr. Shachter: Certainly the wording in front of us doesn't set out whether it's specific or general. That's correct.

Mr. Prue: Thank you.

The Chair: Mr. Prue, would you like another opinion? I understand you're looking for clarification.

Mr. Prue: Sure. I especially like lawyers. If you get two lawyers, you usually get three opinions, so please.

Ms. Lucinda Mifsud: Mr. Shachter is quite right. The regulation-making authority comes under 70.1. It does say the regulation made can be made general or particular. So it's probably likely that they could do it. It's very unusual to do regulation on a particular basis with so many municipalities. I don't think we've done it very often in the province, but I think it is possible.

Mr. Prue: Is the wording here general, in motion 77?

Ms. Mifsud: It says, "A regulation made under ... section 70 may be general or particular in its application," which means it can apply generally or in a particular case.

Mr. Prue: Yes, but the motion we have here, number 77: Is there anything in the particular wording of the motion to indicate that that is anything other than a general application?

Ms. Mifsud: The regulation-making power is not actually in here. I'm not sure whether it comes under 70.1 or this is its own story. If this is its own, you're quite right: It can only be done generally if there is nothing limiting it.

Mr. Prue: Thank you.

Mr. Hardeman: If I could ask through legal counsel—

Ms. Mifsud: I shouldn't have opened my mouth.

Mr. Hardeman: —if this is to pass, could the minister make a regulation that accepts the complete application form from every municipality that has one? Could

he make a regulation that obligated the municipality to set the standard individually?

Ms. Mifsud: No. That would be passing it on to the municipality, sub-delegating to the municipality, and what the minister should be doing is including the details in the regulation itself.

The Chair: Any further comments on this motion? Seeing none, all those in favour of the motion? All those opposed? That's lost.

A government motion. Mr. Lalonde.

Mr. Lalonde: I move that subsection 51(19.1) of the Planning Act, as set out in subsection 21(2) of the bill, be struck out and the following substituted:

"Response re completeness of application

"(19.1) Within 30 days after the applicant pays any fee under section 69 or 69.1, the approval authority shall notify the applicant and the clerk of the municipality in which the land is located or the secretary-treasurer of the planning board in whose planning area the land is located that the information and material required under subsections (17) and (18), if any, have been provided, or that they have not been provided, as the case may be.

"Motion re dispute

"(19.1.1) Within 30 days after a negative notice is given under subsection (19.1), the applicant or the approval authority may make a motion for directions to have the municipal board determine,

"(a) whether the information and material have in fact been provided; or

"(b) whether a requirement made under subsection (18) is reasonable.

"Same

"(19.1.2) If the approval authority does not give any notice under subsection (19.1), the applicant may make a motion under subsection (19.1.1) at any time after the 30-day period described in subsection (19.1) has elapsed.

"Notice of particulars and public access

"(19.1.3) Within 15 days after the approval authority gives an affirmative notice under subsection (19.1), or within 15 days after the municipal board advises the approval authority and the clerk or secretary-treasurer of its affirmative decision under subsection (19.1.1), as the case may be, the council or planning board shall,

"(a) give the prescribed persons and public bodies, in the prescribed manner, notice of the application, accompanied by the prescribed information; and

"(b) make the information and material provided under subsections (17) and (18) available to the public."

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The Chair: Any comments or questions?

Ms. MacLeod: This is going to be different from the previous section, and I'm just—

Mr. Sergio: No.

Ms. MacLeod: Well, you know what? You've got an awful lot of specific timelines here that at least in my copy of the bill we don't have, so I'm just wondering if I could be provided with the rationale for the timelines.

Mr. Sergio: We have already dealt with this in previous motions as well. This again deals with an application,

giving direction to council, actually, to make a decision within 30 days if indeed the application is complete, what constitutes an application that's complete, and to respond within 15 days. If it isn't, then the applicant can apply to the OMB to get a decision on if the application was complete or not. We already dealt with this in previous motions.

The Chair: Any further comments or questions?

Mr. Prue: Again, I trust local government to determine in their best interest what documentation they need. I know that this is an outlet, I know it's an outlet that the developers have long been arguing they need, and I know that the government is trying to placate them with this motion. But I still think the municipalities are in the best position to know what documentation they need and ought not to be spending taxpayers' money running off to the board explaining themselves.

The Chair: Any further comments or questions?

Seeing none, shall the motion carry? All those in favour? All those opposed? That's carried.

The next motion, number 79, is a government motion. Mr. Flynn.

Mr. Kevin Daniel Flynn (Oakville): Good morning, Madam Chair.

I move that subsection 51(19.2) of the Planning Act, as set out in subsection 21(2) of the bill, be amended by striking out "subsection (19.1)" and substituting "subsection (19.1.1)".

It's just a consequential amendment.

The Chair: Comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

The next motion is a government motion.

Mr. Brownell: I move that section 21 of the bill be amended by adding the following subsection:

"(3.1) Subsection 51(24) of the act is amended by striking out 'and' at the end of clause (k), by adding 'and' at the end of clause (l) and by adding the following clause:

"(m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41(2) of this act or subsection 114(2) of the City of Toronto Act, 2006."

The Chair: Comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

The next government motion, Mr. Rinaldi.

Mr. Rinaldi: I move that section 21 of the bill be amended by adding the following subsection:

"(5.1) Section 51 of the act is amended by adding the following subsection:

"Consolidated Hearings Act

"(34.1) Despite the Consolidated Hearings Act, the proponent of an undertaking shall not give notice to the hearings registrar under subsection 3(1) of that act in respect of an application for approval of a draft plan of subdivision unless the approval authority has given or

refused to give approval to the draft plan of subdivision or the time period referred to in subsection (34) has expired.”

The Chair: Comments or questions?

Ms. MacLeod: Can I have a rationale for that?

Mr. Sergio: This will ensure that both councils and the public indeed will have an opportunity to review the contents of the application prior to an applicant’s making a direct application to the Ontario Municipal Board or another appealing body. We believe it’s good for the process where council will have an opportunity to review the application prior to having someone go directly to an OMB.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That’s carried.

Next is a government motion. Mr. Lalonde.

Mr. Lalonde: I move that subsection 21(6) of the bill be struck out and the following substituted:

“(6) Subsection 51(39) of the act is repealed and the following substituted:

“Appeal

“(39) Subject to subsection (43), not later than 20 days after the day that the giving of notice under subsection (37) is completed, any of the following may appeal the decision, the lapsing provision or any of the conditions to the municipal board by filing with the approval authority a notice of appeal that must set out the reasons for the appeal, accompanied by the fee prescribed under the Ontario Municipal Board Act:

“1. The applicant.

“2. A person or public body who, before the approval authority made its decision, made oral submissions at a public meeting or written submissions to the approval authority.

“3. The minister.

“4. The municipality in which the land is located or the planning board in whose planning area the land is located.

“5. If the land is not located in a municipality or in the planning area of a planning board, any person or public body.

“(6.1) Subsection 51(43) of the act is repealed and the following substituted:

“Appeal

“(43) At any time before the approval of the final plan of subdivision under subsection (58), any of the following may appeal any of the conditions to the municipal board by filing with the approval authority a notice of appeal that must set out the reasons for the appeal, accompanied by the fee prescribed under the Ontario Municipal Board Act:

“1. The applicant.

“2. A public body that, before the approval authority made its decision, made oral submissions at a public meeting or written submissions to the approval authority.

“3. The minister.

“4. The municipality in which the land is located or the planning board in whose planning area the land is located.

“5. If the land is not located in a municipality or in the planning area of a planning board, any public body.”

The Chair: Comments or questions?

Ms. MacLeod: As in previous motions, this significantly alters the piece of legislation before us. This is not the first time one sentence has been changed with two pages, so I was just wondering if we could receive a rationale for this and some examples of people who appeared before committee asking for this.

Mr. Sergio: Madam Chair, can we have Mr. Shachter? Unfortunately I have to leave the committee. I have to excuse myself.

The Chair: Mr. Shachter, can you respond to explain it from a legal perspective?

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Mr. Shachter: I can’t speak to the rationale but I can certainly speak legally to what the provision would provide. It provides that—again, you’ll remember that yesterday we spoke of setting out a list of who could appeal with respect to official plan, official plan amendment matters and zoning bylaw matters. This is consistent with that. What has now happened is that anybody can “appeal the decision, the lapsing provision or any of the conditions” that have been imposed.

You can see it on the list: “the applicant”; somebody who had, again, “made oral submissions ... or written submissions”; “the minister”; “the municipality”; or, “if the land is not located in the municipality,” then “any person or public body.” The reason for that basis is that, you may recollect, when you have land that’s in an unorganized municipality, in many cases you won’t have public meetings. It’s really more of a southern type of concept, if I can use the term.

That’s really what subsection (43) does too. It’s the same thing. This one just deals with approval of the final plan of subdivision, so it’s at two different points in the same subdivision application process.

I’ll be happy to clarify further if you need any further clarification.

Ms. MacLeod: I see Mr. Hardeman coming in, so I’m sure he would like some clarification.

The Chair: Does that mean we do need more clarification? He’s a smart guy who understands.

Ms. MacLeod: Yes, if you could repeat, just for Mr. Hardeman.

The Chair: Can I have you attach it to a question? I don’t want him just to repeat what he said.

Ms. MacLeod: Sure. What I’m concerned about is that this significantly alters the piece of legislation which is in front of us. It’s not the first time we’ve seen one sentence turn into two pages of motions. It’s quite specific, and I would like to know, for clarification purposes, exactly what this will mean for the appeals process.

Mr. Shachter: Again, as I indicated before, I’m not really in a position to speak to what it would mean. All I

can do, unfortunately, and I apologize, is pretty much repeat what I've just said before, that it does set out a list of who could "appeal the decision, the lapsing provision or any of the conditions" imposed as of right. You can see paragraphs 1 to 5 set out the various groups or entities that could appeal. You'll remember that yesterday there was discussion of some reference of a person or public body who could appeal as of right if they'd "made oral submissions at a public meeting or written submissions to the approval authority."

The one paragraph I did direct you to was paragraph 5, that deals with circumstances—where you've got an unorganized municipality, you would not have a public meeting. So that could not be used as a condition to allowing somebody to appeal.

As I also indicated, the proposed subsection (43) speaks to the same concept. It just deals with a later point in the process. It deals with the point where there's an approval: "At any time before the approval of the final plan of subdivision...."

The Chair: Thank you. Any further comments of questions? Mr. Prue.

Mr. Prue: Just the comment that I will not be supporting this for the same rationale that I've not supported it everywhere else, because it leaves people out who are not able to attend public meetings.

The Chair: Thank you. The motion is on the floor.

Mr. Prue: And a recorded vote, please.

Ayes

Brownell, Flynn, Lalonde, Rinaldi.

Nays

Hardeman, MacLeod, Prue.

The Chair: That's carried.

The next one is a government motion. Mr. Brownell.

Mr. Brownell: I move that subsection 21(7) of the bill be struck out and the following substituted:

"(7) Subsection 51(48) of the act is repealed and the following substituted:

"Appeal

"(48) Any of the following may appeal any of the changed conditions imposed by the approval authority to the municipal board by filing with the approval authority a notice of appeal that must set out the reasons for the appeal, accompanied by the fee prescribed under the Ontario Municipal Board Act:

"1. The applicant.

"2. A person or public body who, before the approval authority gave approval to the draft plan of subdivision, made oral submissions at a public meeting or written submissions to the approval authority or made a written request to be notified of changes to the conditions.

"3. The minister.

"4. The municipality in which the land is located or the planning board in whose planning area the land is located.

"5. If the land is not located in a municipality or in the planning area of a planning board, any person or public body."

The Chair: Comments of questions? Mr. Prue.

Mr. Prue: It may seem hardly likely to happen, but I have to ask the question anyway. What if a decision is made to build a property in an unincorporated area, and in the 30 days or so where an appeal is open, that unincorporated area either gets swallowed up by an adjoining area or incorporates itself? Would a citizen lose his right to appeal? There would be no hearing, and all of a sudden he'd find himself in an incorporated area within the 30 days. What would happen?

Mr. Shachter: I have to apologize; I'm not in a position to answer that. I think you're getting into fairly detailed municipal matters.

Mr. Prue: The only reason I'm asking that is, would it not be appropriate to say "on the date the decision was made"? I'm just worried about the 30 days. Things can happen in 30 days.

Mr. Shachter: Well, I think one of the things you have to remember with respect to this particular provision is that it doesn't sit in and of itself. Again, this is part of the process. This only kicks in when you have changed conditions, so you already have the previous provisions applying in terms of the requirement to be part of the process. It really, in some sense, just extends that. I think what you'd want to do, though, is maintain the 30-day period, I would suspect.

Mr. Prue: No, but see, this is the only place where a citizen doesn't have to attend the meeting to have a right to appeal, if he lives in an unincorporated area. What happens to him in that appeal period, those 30 days, if he happens to then find himself in an incorporated area? Would he lose his right of appeal? That's the only thing I'm worried about. Once or twice a year you see some area in Ontario that either incorporates or an adjoining municipality will take over the unincorporated area. Once or twice a year that happens in Ontario. I'm just wondering what would happen to that citizen who had a right. Could it be taken away within the 30-day period if in fact he and his household found themselves in an incorporated area?

Mr. Shachter: I think I'd like to respond by saying that the concept has already been introduced in subsection 39 with respect to somebody being able to appeal without having to attend a meeting. So I believe, because that motion has been carried, the concept is already proposed to be carried forward.

Just because I can't resist commenting generally, I am aware of circumstances where there have been situations where municipalities have been organized in an unorganized territory. Again, it's not done in a vacuum. What has to happen is all of the planning tools—decisions have to be made as to how they are all carried forward. It isn't that one day you have one planning system and the next day people's rights are taken away. I understand there are

some decisions that are made as to how the process continues forward so that it does continue, so that things like you've suggested don't occur.

Mr. Hardeman: Just very quickly on that same topic—I find it interesting—what happens if this development was on the line between the incorporated and the unincorporated? Would everyone—

Laughter.

Mr. Hardeman: No, I think this is serious. In fact, one of the biggest developments in my riding straddles the boundary of two municipalities. The CAMI Automotive plant is 80% in the rural municipality and 20% in the town. They built it on the line. They didn't change the boundary. What I want to know is, does everybody become eligible to appeal or only those who live in the unincorporated?

Mr. Shachter: I think the one thing a lawyer learns very early on is not to answer hypothetical questions. Having said that, again, you'd have to take a look at the specific circumstances, but I'm not sure why one would then say that people who are outside of the jurisdiction really would gain rights of those inside the jurisdiction, if the line does become the line.

I am aware of and have dealt with circumstances when I was doing municipal law many years ago where you had developments that were on the line, where a boundary line would go between the two or a zoning line. Half of the land would be subject to one jurisdiction or one process, the other half would be subject to the other, as strange as that might sound.

The Chair: Any further comments or questions?

Mr. Hardeman: Going back to the amendment—

The Chair: Good.

Mr. Hardeman: I'm a little concerned about the section that any of the following may appeal any of the changed conditions imposed by the approval authority, which would be the municipality in most of the cases, to the Ontario Municipal Board. That means if it's going to the Ontario Municipal Board with changed conditions, it would be an application that has been approved by the approval authority.

Mr. Shachter: That's correct. It would have received what's known as draft plan approval.

Mr. Hardeman: So it goes to the Ontario Municipal Board because they have approved it and the applicant or someone else objects to it being approved.

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Mr. Shachter: That's correct, in accordance with the list of those people who could appeal, yes, or could appeal the change of the condition rather than the approval. Remember, the ability to appeal the approval is contained in another subsection of section 51. This subsection (43) only deals with the ability to appeal changed conditions. So the only matter that would be before the board is not the approval but the condition.

Mr. Hardeman: But no approval authority would change conditions on a denial. So we're going to have to assume that everything that's going there with changed conditions has an approval.

Mr. Shachter: That's correct.

Mr. Hardeman: Why would the approval authority want to object to it? Why would they still be listed as an objector, a possible objector? The municipality in which the land is located, why would they appeal their own decision?

Mr. Shachter: Are you talking about paragraph 4 in subsection (43)? I'm just not clear where you're referring to.

Mr. Hardeman: I'm referring to the two in conjunction, the appeal process and who may appeal. It's appealing the conditions. There would be no condition changes on an application that had been denied and the applicant is taking it to the board, because the municipality would not say, "We're going to change these conditions and then we're not going to approve the application." They would only change conditions on an approved application. Why would they, in number 4, then, still be listed as a potential appellant?

Mr. Shachter: Because the municipality is not always the approval authority. There are circumstances where the approval authority can be an entity other than the municipality.

The Chair: Thank you. Mr. Flynn? Sorry, I have another speaker. Can I come back to you?

Mr. Hardeman: Yes.

Mr. Flynn: I'm quite prepared to let Mr. Hardeman finish.

The Chair: Okay, sure. Mr. Hardeman.

Mr. Hardeman: Who else could it be other than the municipality?

Mr. Shachter: In the north, the minister is the approval authority for plans of subdivisions. I know—and this just comes to mind—when the old city of Toronto existed, Metro Toronto was the approval authority for plans of subdivisions for all of the local municipalities. If you applied this type of provision to that situation, what you'd have is that Metro Toronto would draft-approve, there would be changed conditions, as contemplated, and then the municipality within which the plan of subdivision is to be located could appeal those changed conditions.

Mr. Hardeman: But all those hypothetical ones, would that not be covered in number 5?

Mr. Shachter: No, because again, you have a circumstance where you could have an organized territory where the minister would still be the approval authority, or where you would have other than the municipality as the approval authority. You could have, for example, an upper tier as the approval authority for a series of lower tiers in an area.

The Chair: Mr. Flynn, did you still want to comment?

Mr. Flynn: Yes, I did, Madam Chair. I think it should be noted on motions 82 to 84 what the main intent is. During the hearings it was noted that public bodies were treated differently in their rights to appeal to the OMB than were members of the public or applicants. What this does is it restricts the public bodies, treats them very much the same as the ordinary person on the street or the

ordinary person who is applying or may be appealing to the OMB in this regard. That's the major effect of motions 82 to 84. People came before us, as a government we listened, and we're presenting amendments to make those changes.

Mr. Rinaldi: Just a quick thing to help Mr. Hardeman understand. In my riding, in the county of Northumberland, we have four municipalities that have formed a planning agency and they have the approval authority. I think it's the only one in the province of Ontario, actually, the Pine Ridge planning agency.

The Chair: Any further comments or questions?

Mr. Hardeman: I just want to go back to the comments of Mr. Flynn, and I appreciate that, but I think we all need to understand that when we heard from the presenters at our committee that the municipalities and the public bodies were being treated differently than the public, it wasn't about this. It was that the public was concerned that they were being excluded from appealing. I think Mr. Prue has been speaking to that all the way through the bill, that there are certain members of the public who do not have a right to appeal because they didn't meet the criteria going through the process. That was the concern.

The other part where municipalities and public bodies were being treated differently is that they have a right to bring in new evidence to hearings where the public, the applicants and so forth don't. I don't think this resolution—

The Chair: Mr. Hardeman, could you speak to just the motion, because we're going to get into a debate about what you heard in the hearings and—

Mr. Hardeman: Madam Chair, I'm getting to it. Thank you.

The Chair: Okay, good. Get to the clarification.

Mr. Hardeman: This resolution does absolutely nothing—I see absolutely nothing. Maybe you could point out where in fact it is giving more ability for people to appeal something that they previously didn't have. This amendment doesn't create new appeal authority for anyone, other than it lists municipalities, and I question as to whether that was necessary; obviously, it was explained that it was, and I accept that. But I don't want the record to show that somehow this does a whole lot to deal with what we heard from the public as they were making presentations, that somehow this is making it fairer, that the average citizen has the same power and ability, the same authority, as the public bodies that have been referred to. This doesn't give anyone further right to appeal, other than, as I say, the municipalities, which would not likely need it but do have a right to use it.

The Chair: I believe there was a question in there. Mr. Flynn.

Mr. Flynn: At the end of the day, I think we may have to just disagree on that. But clearly what I heard during the hearings, and what I think other members of the government side heard, was that there was potential for increased equity in the way that applicants were treated, that the right to appeal could be made more

equitable. Motions 82 to 84 do that specifically, put all people on the same footing, except, of course, for the minister, who has the right to appeal at any time.

Mr. Hardeman: I don't want to be argumentative, of course, but I would ask the honourable member if he could point out which part of this amendment gives someone the right to appeal who didn't have it before the public hearings.

Mr. Flynn: That is why I'm making the point. You're talking about something that is not contained in the motion. What this does is make it a more equitable process by treating public bodies very similarly to the way that applicants are treated or are proposed to be treated under the new bill. What you're talking about is increased access to the OMB or something along those lines. What I heard the public ask for were very clear and transparent rules. They wanted to make sure that the applications that went forward to the OMB were the same applications that had been dealt with by the council and in public. What we tried to do in the bill is move things to the beginning of the process so the public is far more involved. That somebody has not made a submission in writing or been involved in the process and doesn't have the right to appeal to the OMB seems to have been the focus of the discussions yesterday, and for the short time I've been here today it appears that's going to be the focus today as well. At the end of the day, we're just going to have to disagree on that, I think.

The Chair: Any further comments or questions?

Mr. Prue: I want a recorded vote, please.

Ayes

Brownell, Flynn, Lalonde, Rinaldi.

Nays

Hardeman, Prue.

The Chair: That's carried.

A government motion is the next one.

Mr. Rinaldi: I move that subsection 21(8) of the bill be struck out and the following substituted:

“(8) Section 51 of the act is amended by adding the following subsections:

“Restriction re adding parties

“(52.1) Despite subsection (52), in the case of an appeal under subsection (39), (43) or (48), only the following may be added as parties:

“1. A person or public body who satisfies one of the conditions set out in subsection (52.2).

“2. The minister.

“3. The appropriate approval authority.

“4. The municipality in which the land is located or the planning board in whose planning area the land is located.

“5. If the land is not located in a municipality or in the planning area of a planning board, any person or public body.

“Same

“(52.2) The conditions mentioned in paragraph 1 of subsection (52.1) are:

“1. Before the approval authority made its decision with respect to the plan of subdivision, the person or public body made oral submissions at a public meeting or written submissions to the approval authority, or made a written request to be notified of changes to the conditions.

“2. The municipal board is of the opinion that there are reasonable grounds to add the person or public body as a party.

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“New evidence at hearing

“(52.3) This subsection applies if information and material that is presented at the hearing of an appeal under subsection (39), (43) or (48) was not provided to the approval authority before it made the decision that is the subject of the appeal.

“Same

“(52.4) When subsection (52.3) applies, the municipal board may, on its own initiative or on a motion by the approval authority or any party, consider whether the information and material could have materially affected the approval authority’s decision, and if the board determined that it could have done so, it shall not be admitted into evidence until subsection (52.5) has been complied with and the prescribed time period has elapsed.

“Notice to approval authority

“(52.5) The municipal board shall notify the approval authority that it is being given an opportunity to,

“(a) reconsider its decision in light of the information and material; and

“(b) make a written recommendation to the board.

“Approval authority’s recommendation

“(52.6) The municipal board shall have regard to the approval authority’s recommendation if it is received within the time period mentioned in subsection (52.4), and may but is not required to do so if it is received afterwards.

“Conflict with SPPA

“(52.7) Subsections (52.1) to (52.6) apply despite the Statutory Powers Procedure Act.”

The Chair: Any comments or questions? Mr. Prue?

Mr. Prue: Just a recorded vote.

Ayes

Brownell, Flynn, Lalonde, Rinaldi.

Nays

Hardeman, Prue.

The Chair: That’s carried.

Mr. Hardeman, motions 85 and 86 are now affected by this motion because it’s replaced section 51.

Mr. Hardeman: Withdrawn.

The Chair: You’ll withdraw 85 and 86? Okay.

A government motion is next. Mr. Lalonde: number 87.

Mr. Lalonde: I move that section 21 of the bill be amended by adding the following subsection:

“(8.1) Subsection 51(53) of the act is amended by striking out ‘on its own motion or on the motion of any party’ in the portion before clause (a) and substituting ‘on its own initiative or on the motion of any party’”.

The Chair: Any comments or questions?

Mr. Hardeman: This is a question maybe to the clerk or to legislative counsel. I was wondering, would the effect of this be the same if that had been added on to the previously debated resolution? Is this just an add-on to that subsection? We’ve changed the whole subsection and now we’re adding to the one we’ve just debated; is that right?

Ms. Mifsud: No. It’s a little confusing because we’re adding a provision into the bill which then amends a provision of the act that is not in the bill.

The Chair: Any further comments or questions? All those in favour of the motion? All those opposed? That’s carried.

A government motion. Mr. Brownell.

Mr. Brownell: I move that section 21 of the bill be amended by adding the following subsections:

“(11) Section 51 of the act is amended by adding the following subsection:

“Same

“(53.1) Despite the Statutory Powers Procedure Act and subsection (52), the municipal board may, on its own initiative or on the motion of the municipality, the appropriate approval authority or the minister, dismiss all or part of an appeal without holding a hearing if, in the board’s opinion, the application to which the appeal relates is substantially different from the application that was before council at the time of its decision.

“(12) Subsection 51(54.1) of the act is repealed and the following substituted:

“Dismissal

“(54.1) Despite the Statutory Powers Procedure Act, the municipal board may dismiss all or part of an appeal after holding a hearing or without holding a hearing on the motion under subsection (53) or (53.1), as it considers appropriate.”

The Chair: Comments or questions?

Mr. Hardeman: Just a question, and we’ll need the legal branch to say. “Despite the Statutory Powers Procedure Act”: Is this the same as it presently is in the act?

Mr. Shachter: That’s correct. It’s the same rationale as we discussed yesterday with respect to the reason why it has to be in this provision.

The Chair: All those in favour of the motion? All those opposed? That’s carried.

The last part of this bill is a Conservative motion. Mr. Hardeman.

Mr. Hardeman: I move that subsection 22(1) of the bill be amended by adding the following provision between—

The Chair: Mr. Hardeman, I've procedurally jumped ahead. I should have had a vote on section 21 before I got to you.

Shall section 21, as amended, carry? All those in favour? All those opposed? That's carried.

Sorry, Mr. Hardeman. You have the floor.

Mr. Hardeman: Thank you very much, Madam Chair.

I move that subsection 22(1) of the bill be amended by adding the following provision between subsections 53(3) and 53(4) of the Planning Act:

"Regulations

"(3.1) The minister may make regulations,

"(a) determining what constitutes a completed application for the purposes of this section; and

"(b) requiring that a pre-consultation process be established for the purposes of this section and setting out standards and rules for the carrying out of the pre-consultation process."

This is the same resolution for this section as there was for the previous section that we had considerable debate about: the minister's being able to fix a problem that existed, if it existed, with municipalities. The municipalities have the authority to do this throughout the act. This would give the minister the opportunity to do that if he did not believe that it was being done properly by municipalities. I think it's a safety net, if nothing else, to make sure that we address the problem that the industry told us in their presentations could occur: that municipalities would not set the criteria and then turn around and keep asking for information and delaying the process. That is why it's before us. I ask support from all sides for this amendment.

Mr. Prue: I will not be supporting this, for the same rationale as given before: because it's worded generally that the minister may make regulations; it's not specific to a problem but would encumber all 450 municipalities.

The Chair: Any further comments or questions? All those in favour of the motion? All those opposed? That's lost.

Government motion, Mr. Rinaldi.

Mr. Rinaldi: I move that subsection 53(4.1) of the Planning Act, as set out in subsection 22(1) of the bill, be struck out and the following substituted:

"Motion re dispute

"(4.1) The applicant, the council or the minister may make a motion for directions to have the municipal board determine,

"(a) whether the information and material required under subsections (2) and (3), if any, have in fact been provided; or

"(b) whether a requirement made under subsection (3) is reasonable."

The Chair: Comments or questions?

Mr. Hardeman: Yes, if I can have an explanation of what this is changing.

Mr. Flynn: It simply provides that the applicant is able to seek direction, in the case of a dispute, as to whether or not an application is complete. The intent is

that a complete application would be defined under the official plan and approval process. If that were not successful or if there was a dispute at the end of the day, the OMB would have the ability to remedy that or would have the ability to hear an appeal on the completeness of the application.

Mr. Hardeman: If I could carry on, Madam Chair, with "(b) whether a requirement made under subsection (3) is reasonable": Does this give the OMB the opportunity to address what is considered a complete application in the municipal official plan?

Mr. Flynn: In specific circumstances. If there's a dispute as to whether—obviously, the applicant would feel that the application is complete. The municipality probably would feel that it isn't. The applicant then would have the right to go to the OMB to determine just who is right in that regard. That's the whole import of it.

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Mr. Hardeman: If I could, I just wanted to go on, as part of the discussion, to a number of motions back when we talked about the shadow issue for large buildings. If that were part of the city of Toronto's complete application, could the Ontario Municipal Board, under this section, decide that because of the type of development, it was unreasonable to ask for one of those studies?

Mr. Flynn: I suppose the OMB can do anything it wants to within certain parameters, but certainly I would think that the OMB could take a look, at the request of the municipality, for certain studies. If it thought that perhaps the requirements were onerous in certain applications, it could certainly say that, it could certainly make a ruling on that, but it's hypothetical. Shadow studies—

The Chair: Mr. Hardeman, can I ask you not to do the hypothetical thing? I think lawyers have difficulty answering it and people who are non-lawyers have even more difficulty. If it's a legal question, you can ask legal staff to give you an interpretation, but I think it would be unwise for any member here to speculate what OMB would decide or ask for.

Mr. Hardeman: I don't want to disagree with the Chair, of course, but I think I would leave it to the members on the government side if they wish to answer or not wish to answer. I would that they respect my right to ask the questions as I see fit.

The Chair: I understand, but I'm going to try and caution you. You can ask the question, but I'm asking you to please not ask for speculation.

Mr. Hardeman: I would then direct the question to the legal ministry staff as to whether, if we look at this section, a requirement made under subsection (3) is reasonable. Is the intent of that to grant the power to the OMB to make a decision whether complete application criteria, as set out in the municipal document, are reasonable, and could they—obviously they're going to include a lot of things in that study based on all applications. If the application goes to the OMB, if it would be reasonably assumed that you don't need a shadow study, does this give the OMB the power to override the municipal standard?

Mr. Shachter: Yes. It's the same type of concept as was discussed yesterday with respect to the various types of applications, the ability, as was discussed before, for an applicant in a municipality to go before the OMB on a summary basis to determine (a) as you indicated, whether the application is complete, and (b) the reasonableness of the matters that are required in a specific situation.

Mr. Hardeman: Thank you.

Mr. Prue: I know it could be hypothetical, but I'm reading this and I'm trying to think of any condition whatsoever that a council would go before the OMB to argue whether the information they were requesting had been provided. The council generally says, "I want the information. I want more information." I understand why an applicant would go, and I understand perhaps why the minister might go if he was in favour of what the applicant was doing and didn't like what the council was doing, but can you tell me a circumstance under which a council—why is it in here? Why would you include the council? Why would a council go before the OMB to argue that the information they wanted—I mean, they have that authority without going to the OMB. They can just do nothing. Why would they go to the OMB?

Mr. Shachter: I think it's not a circumstance of the council determining whether what they have said is or isn't required. It's that any of those three parties may make the motion to the board. For example, if there's an impasse between an applicant and a council arguing with respect to what would be required, what would not be required, instead of having sort of a sandbox type of argument, then the council could actually take the matter to the board for determination, as opposed to waiting for the applicant to take the matter to the board.

Mr. Prue: So they could just usurp what they—okay. I don't think it's ever going to happen, but okay.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Next government motion, Mr. Lalonde.

Mr. Lalonde: I move that section 22 of the bill be amended by adding the following subsections:

"(1.1) Section 53 of the act is amended by adding the following subsection:

"Consolidated Hearings Act

"(14.1) Despite the Consolidated Hearings Act, the proponent of an undertaking shall not give notice to the hearings registrar under subsection 3(1) of the act in respect of an application requested under subsection (1) unless the council or the minister has given or refused to give a provisional consent or the time period referred to in subsection (14) has expired.

"(1.2) Subsection 53(31) of the act is amended by striking out 'on its own motion or on the motion of any party' in the portion before clause (a) and substituting 'on its own initiative or on the motion of any party'."

The Chair: Any comments or questions? Mr. Hardeman.

Mr. Hardeman: Could I get an explanation on the Consolidated Hearings Act, 14(1), as to what it says, in language I can understand?

Mr. Flynn: The intent is that people, applicants, cannot bypass the public or the council planning process by going directly to joint or consolidated hearings.

The Chair: Any further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 22, as amended, carry? All those in favour? All those opposed? That's carried.

Next motion—the only motion I have is actually 94, and that is a government motion.

Mr. Prue: We have to deal with section 23.

The Chair: You can. How about after we do all the motions I have in front of me? Then you can speak to the section.

Mr. Prue: But I thought the procedure, Madam Chair—correct me if I'm wrong. We have been going through section by section. So shall section 23—

The Chair: I'm still on the section. I'm not finished the section. You will have an opportunity. I'm just going to deal with all the motions in the section and then you can speak to it. Okay?

Mr. Prue: Okay.

The Chair: So it's a government motion. Mr. Brownell.

Mr. Brownell: I move that section 62.0.1 of the Planning Act, as set out in section 23 of the bill, be struck out and the following substituted:

"Exempt undertakings

"62.0.1(1) An undertaking or class of undertakings within the meaning of the Environmental Assessment Act that relates to energy is not subject to this act or to section 113 or 114 of the City of Toronto Act, 2006 if,

"(a) it has been approved under part II or part II.1 of the Environmental Assessment Act or is the subject of,

"(i) an order under section 3.1 or a declaration under section 3.2 of that act, or

"(ii) an exempting regulation made under that act; and

"(b) a regulation under clause 70(h) prescribing the undertaking or class of undertakings is in effect.

"Same

"(2) An undertaking referred to in subsection 62(1) that has been approved under the Environmental Assessment Act is not subject to section 113 or 114 of the City of Toronto Act, 2006."

The Chair: Comments or questions? Ms. MacLeod.

Ms. MacLeod: Despite the minor wording here and the addition of "Same, (2) An undertaking referred to in subsection 62(1)," legal counsel, does this still exempt or remove municipalities from the planning process on a large-scale energy project?

Mr. Shachter: That's correct. Should a project or an undertaking, as is referred to, comply with the conditions that are set out in (a) or (b) of that clause, then neither the Planning Act provisions nor those provisions referred to in the City of Toronto Act would apply.

The Chair: Comments or questions? Mr. Prue.

Mr. Prue: I don't know who would answer the question but this is new to have been added. Why did you add it?

The Chair: Mr. Flynn, did you want to respond?

Mr. Flynn: The process, as I understand it—I'm a little bit at a loss that we're dealing with 94 and not with the PC and NDP motions. Can you just explain that to me?

The Chair: They're not motions.

Mr. Flynn: Okay. They're notices.

The Chair: They're notices, and I only deal with motions. I'll give people an opportunity to speak about the sections when we've finished with the business of the section.

Mr. Flynn: Okay. The one we're dealing with now is a technical motion that clarifies that 62.0.1 and 62(1) are intended to apply across the entire province. That's what's on the table before us, as I see it.

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Mr. Prue: This previously did not apply to the city of Toronto and you've now included them?

The Chair: Is this a legal question? Mr. Shachter, can you respond?

Mr. Prue: Is that the difference?

Mr. Shachter: That's correct.

Mr. Prue: Then I have to ask the question: The city of Toronto is in the process of fighting the province over the port lands energy project. By passage of this motion, you are going to usurp the authority of the city of Toronto to do that?

Ms. MacLeod: It's retroactive.

Mr. Prue: Yes, it's retroactive. If "(i) an order under section 3.1 or a declaration under section 3.2 of that act, or (ii) an exempting regulation made under that act," then it happens, whether the city of Toronto wants it or not. Is that the effect of this?

Mr. Shachter: If the question is a legal question, I guess the answer is, if it meets (a), which is the exempting regulation or those other matters under the Environmental Assessment Act, and there's a regulation that is made that applies to that undertaking or class of undertakings, then neither the Planning Act would apply nor those provisions in the City of Toronto Act that relate to zoning with conditions or site plan control, which as you know the city has, would apply.

Mr. Prue: That would mean that the city of Toronto's efforts to stop the province from building the port lands energy project, if this passes, would be negated. They would have no authority. They couldn't do it. The end. "Thanks for the fight. Goodbye, guys. Go home." Is that what this is about? That's what I think this is about.

Interjection.

Mr. Prue: So you're admitting that's what this is about.

The Chair: I have to stop the debate. Can you either ask a question of the member—

Mr. Prue: I asked the question but then he interjected.

The Chair: I understand that. I'm trying to make sure you play nicely. Mr. Prue, you still have the floor.

Mr. Prue: And I'm still asking the question.

The Chair: You're asking a question of legal counsel?

Mr. Prue: Yes, I am.

Mr. Shachter: I do have to apologize. I don't think I'm in a position to answer the question. It doesn't appear to really call for a legal interpretation. I have clarified the way the section is intended or works as it's laid out. I think issues about the port lands project or any rationale relating to it may be better addressed to the members who are here.

Mr. Prue: If this motion passes, would the city of Toronto have any authority to fight any energy project, anything at all, any differently than any other municipality in Ontario? That is, the province says, under section 23, "You can't do it," or "We're going to do exactly what you want and the planning process shall not apply."

Mr. Shachter: If I can just answer it a different way, both 62 and 62.0.1, which deal with Hydro One and OPG, and 62(1), which deals with undertakings other than those undertakings, would then be treated exactly the same across the whole of the province.

Mr. Prue: Then perhaps I can ask Mr. Flynn—who was about to answer, saying that he wants the lights to stay on—is this an attempt to stop the city of Toronto from fighting the province on the port lands energy project? Is that what you're doing here?

Mr. Flynn: I don't see the words "Port lands" anywhere in here. All proponents in Ontario, for any energy projects, are encouraged to follow the municipal process. That's clearly the intent of the government. I think that's clearly what the public would like to see, and I believe all political parties would like to see that. This exemption would be used as a last resort.

Mr. Prue: Then I take it that it gives the government of Ontario the final authority to say, "We are going to impose this upon you whether you wish it or not."

Mr. Flynn: When the need to supply energy to the province of Ontario reaches a certain point, and if an impasse is reached, the government of Ontario would have the authority.

Mr. Prue: Just to speak to it, then, those are all the questions I have. I don't know whether anyone else has any.

Mr. Hardeman: I guess this goes to the answer to the last question. Maybe I'm missing what this amendment does, and that's why I wanted to ask a question. This is going to be used, in the comments that were made, as a last resort. But in fact this isn't a last-resort amendment. This is an amendment that exempts the project from the planning process, so that's a first-resort action. If you were going to develop an energy project, you would not need to go through the planning process. Is that not right?

Mr. Shachter: If I can clarify the motion as opposed to the bill, as you know, Bill 51 already contains a section 62.0.1 that deals with various matters respecting private undertakings and the regulation and the application of the Planning Act. What this motion specifically does is, it includes the references to sections 113 and 114 of the City of Toronto Act. You'll remember that the City of Toronto Act has certain specific planning approvals in two areas: minimum-maximum densities, but zoning with

conditions, primarily, and site plan controls. So it's to cover off both in 62(1), which relates to Hydro One and OPG or the subsidiaries, as well 62.0.1, so that the treatment will be consistent, if I can put it like that. That's what the motion is to do.

Mr. Hardeman: I understand the connection that this actual amendment takes the City of Toronto Act and makes it consistent with the section of the bill as it applies to the rest of the province. But the effect of it—am I wrong in assuming that in the rest of the province the applications do not need to go through the planning process? Conversely, if this makes Toronto the same as that, are we eliminating the city's ability to circumvent, to slow down or to move the actual development, because it no longer requires the planning process?

Mr. Shachter: That's correct.

Mr. Hardeman: So it is as Mr. Prue suggested, then. If the objection from the city of Toronto presently is that it's improper planning and they're not going to approve the planning for it, this amendment will negate the need for that planning approval.

Mr. Shachter: That's correct, subject to compliance with the conditions that are contained in the section.

Mr. Hardeman: Thank you.

The Chair: If there are no further comments on this motion—

Mr. Prue: Yes, I wish to speak.

The Chair: You want to speak on the motion.

Mr. Prue: I've asked my questions. I want to say this. As members opposite know, the city of Toronto does not want you to locate the site where you want to locate it. They are in the process of using sections 113 and 114 of the City of Toronto Act—an act which you very proudly proclaimed and spoke to and argued in favour of in the Legislature not more than two months ago—to do what you said they could do. Now here you go, you're taking away what you gave them. You gave them the right for site plan approval, you gave them the right for zoning on projects, and now you are taking it away by virtue of this amendment.

I have to say I find this really quite disgraceful, because this was not the subject of any public hearings. When the city of Toronto came here, this motion was not before them. The city of Toronto did not talk about what you are attempting to do here today because they did not know you were going to do it. You did not put it in Bill 51. You are putting it here, at the very last moment, so that there can be no public comment from them, so that the mayor cannot come down here. I don't even know whether the mayor knows it's here. Did you even inform the mayor? This is a rhetorical question. Did you even inform the mayor and the council that you were doing this to them, that you were taking away rights that you gave them a month ago, when the mayor stood up with the Premier and thanked him very much for treating Toronto in a mature way? I wonder whether he's going to be saying that this afternoon when he finds out what you're doing today.

Quite frankly, this is but one thing you're doing to the city of Toronto. You can say you're treating all the muni-

cipalities the same way, and I guess you are. But I don't like the way you're treating all of them and I particularly don't like the way you are treating a city which you claim to have a special relationship with. We know the Premier continues to talk about having municipalities as special partners, as mature partners, as people with whom he can deal, and saying, "We want to deal with you in a really wonderful way." But what you're doing here, for whatever your own purpose is, is determining that the municipality ought not to have the rights that you gave them but one month ago and that you're claiming to be giving them still in the changes to the Municipal Act.

This means that not only is there going to be a port lands project in Toronto, but this means that every municipality in Ontario is vulnerable to whatever whim you or future governments have. There can be energy from waste if they don't want it. There can be a nuclear power plant in their downtown if you deem that that's appropriate, if they don't want it.

1150

Mr. Flynn: That's silly.

Mr. Prue: Oh yes, oh yes.

Interjection.

Mr. Prue: No, no. There's no planning process.

Interjection.

Mr. Prue: There's nothing they can say about—

The Chair: I'm not going to allow debate. Mr. Prue has the floor.

Mr. Prue: They have lost every single avenue of local control if this motion is passed, and if section 23 is passed.

What has this got to do with good planning practices? The location of energy projects needs to take into account the compatibility of the surrounding lands; it needs to take into account what the official plans of the municipalities are.

In this particular motion, number 94, the city of Toronto has deemed that the port lands are to be re-developed. There is a plan to make this into one of the truly great cities of the world, similar to what has happened in London with Canary Wharf, or Barcelona or Chicago with the port lands. What you are determining is that you don't want to let them do that. You are determining that your priority is greater than their priority, and that you are going to use a sledgehammer to take that away.

I don't know what to say except that I am so incredibly angry—I am so incredibly angry. I don't know what you're going to say. You're probably not going to say anything in defence.

Mr. Flynn: I'm going to say a lot.

Mr. Prue: Okay, good. I want to hear this, because whatever you say, I'm going to get a transcript of this and I'm sending it to the city of Toronto council and to everyone else, because I want to see why you think it's important that something you so gladly gave them a month or two ago you're taking away, and why you think you should be able to impose your will over 2.5 million people in the city of Toronto, who want something else.

I just think this is beyond disgrace, what is happening here today—beyond disgrace. It's been done in the backdoor, it's been done without any public consultation. It's been done with a motion at the very last minute which has not been circulated to the city of Toronto, its staff or anyone else.

Madam, I think I've said enough, but I do want to a recorded vote.

The Chair: Mr. Flynn.

Mr. Flynn: That's absolute tripe. The city of Toronto spoke to section 23 when they were here in the public hearings. They fully understand—

Mr. Prue: Was this on there?

Mr. Flynn: They fully understand that the provision applies to them; that's very clear.

A similar provision exists right now for Ontario Hydro, OPG and Hydro One. We're proposing to extend those undertakings to any other projects around this. Already, Hydro One and OPG have this provision. I don't see a nuclear power plant in the middle of Toronto. They've had this provision for a long, long time. I don't think the alarmist stuff really serves this process at all. I understand you're upset, I understand you don't agree, but I don't think we have to use scare tactics to get our point across. Certainly we don't from the government's side.

The process is very similar to one that exists right now for OPG and Hydro One. Any proposed project is not going to be placed willy-nilly. They're still subject to the Environmental Assessment Board. They're fully regulated by the Ontario Energy Board requirements.

Exemptions under these circumstances are not automatic. Maybe the council can elaborate on this a little bit. They're not automatic. They'd require a regulation to bring them into force and would only be considered if we started to run into a situation where we needed a last resort, where the energy supply for the province or the energy supply for the area was somehow placed in jeopardy.

I think it needs to be said that we've done a lot to involve the public in this process. I've heard terms like "abomination" and "disgrace," and all sorts of things. We have to remember that we're dealing with an OMB process that existed under Mr. Prue's party and existed under the previous government as well.

What we have done to that process is increase public input tremendously. We've defined what a complete application is, and we've extended the time frame for applications from 90 days, as it was under the previous government, to 180 days. We've moved the consultation and the public input part to the front end of the planning process, where the public clearly wanted it, where they really wanted to be involved. We've made sure that the application that appears before the council is the one that will appear before the OMB, that applications aren't switched halfway through the process. We've strengthened the wording; we've now said that the OMB not just "must consider" what a council has to say, but must "have regard" for what that council has to say. We've given the OMB the authority and the power to refer

information back to council if they receive information that they think, had that council had that information, they might have acted differently. Now the public can apply at any time during the process to be a party. If they're involved in the process they can apply to the OMB as well, obviously.

So I think we've done a lot to encourage public input in the planning process, which was sorely lacking when your party, Mr. Prue, was in power, and certainly the points have been made that some of the changes that were made by the previous government did not extend public input, but in fact severely inhibited it. So we're still asking, we're still insisting, that energy project proponents go through the municipal planning process. What we're saying is that in cases where the supply of energy is in jeopardy to the province of Ontario, to hospitals or to industry or to just plain old homes that want to have their lights on, there is an exemption power that exists to move that project forward. That's it in a nutshell. I know that Mr. Prue will probably not agree with that. I don't know where the other party stands on that. We've very clear on this.

The Chair: Mr. Hardeman, I think you indicated—

Mr. Hardeman: We thank the member from the government side for explaining the issues and the changes made to the Planning Act, but I think you totally glossed over the fact that for these purposes, for the energy purposes, you have exempted them from the Planning Act, so you've got much more government involvement but no municipal involvement in the energy ones. I think that's really the concern.

A couple of questions, and I'm not sure you can answer them. The parliamentary assistant yesterday during the hearings a couple of times mentioned the fact, first, that Hazel, and I suppose Mr. Flynn would know which Hazel I'm referring to—that I should ask her, because she agreed with what was being discussed here, what the government was proposing in one of the amendments. I was a little concerned about that, because how did the mayor of Mississauga know about the amendments before I knew about the amendments? Whether she agreed or disagreed was irrelevant. Then there was another issue an hour later and I said, "Are you sure? Have you talked to the city of Toronto about this, because you're taking authority away from them that you gave them previously, and now you're taking it back." They said, "Well, you ask Mr. Miller. He agrees with it."

I want to know, if those discussions have taken place between the government and the local municipalities, if any of that discussion took place on this amendment that changes the situation as it relates to the energy projects presently under way in the city of Toronto that will be affected by this amendment. Have any discussions taken place? Could you tell us that the mayor of the city of Toronto supports this amendment?

The Chair: Mr. Hardeman, let me just get some clarification. Your question was for the parliamentary assistant, but he's had to step out.

Mr. Hardeman: Obviously, the spokesperson for the government side; I don't care who answers it.

The Chair: So I'm just wondering, is there anybody from the staff perspective who can make that response?

Mr. Hardeman: I just want to know if that consultation took place.

The Chair: All right, then. We're going to be using Mr. Flynn's best knowledge as to what—

Mr. Flynn: Have I had conversations with the city of Toronto? Obviously not. Do I know of every conversation that's taken place on this issue? No, I don't. What I do know is that the city of Toronto appeared before us in the public hearings, asked for certain things, and understands that these provisions will apply to them. Obviously, Mayor McCallion was here and made a presentation. Whether the amendments that she asked for or that AMO perhaps asked for have been discussed specifically with Mayor Hazel, I think you would have to ask the staff. I haven't had those conversations with her.

Mr. Hardeman: Madam Chair, I would ask if we could have the staff come forward to say whether any of those public consultations took place. It was directly—and it will be in Hansard. The parliamentary assistant said yesterday—he was speaking to the amendment—that in fact those two, both the mayor of Toronto in the one case and the mayor of Mississauga in the other case, agreed with the amendment. So I want to know if this amendment has had that same discussion, if we can have someone from the ministry.

The Chair: Do we have any staff who have knowledge of this and can come forward and confirm this? No. I see nobody. Okay.

Ms. MacLeod, you had a question?

Ms. MacLeod: No, just a general comment.

The Chair: There's nobody who can answer your question, Mr. Hardeman.

Mr. Hardeman: Madam Chair, I would then respectfully request that someone be asked to get someone who could answer that question. It's a legitimate question that we have of staff. The answer may be no, but I'd like to know whether they did consultation on this project to come up with this amendment. I think that's a reasonable request. Any member of this committee has a right to ask for staff to report.

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The Chair: Mr. Hardeman, can I just interrupt? I think you've just heard from Mr. Flynn that they participated in the consultation in the course of the hearing process, so that consultation did occur. Mr. Flynn, can you add any more?

Mr. Flynn: No. I'm sure that Mayor McCallion would return Mr. Hardeman's call if he wanted. If she was involved in the conversation, she would certainly know, if she was involved in any way. I haven't talked to her. This bill's been out since December. It's been out going on a year now, eight or nine months, and this provision has not changed.

Mr. Prue: If I could, for the record, this amendment has been out for one day.

The Chair: Ms. MacLeod, you have the floor.

Ms. MacLeod: I just wanted to add a comment because we're talking about the public process and public input. I have to beg to differ with the government side on this. You'll take it as no surprise that I agree with Mr. Hardeman and Mr. Prue. You're severely inhibiting the public input in the planning process by eliminating the municipality here. You have limited debate on this piece of legislation. The city of Toronto has not seen this amendment. In fact, entire sections of this piece of legislation have been rewritten in the last two days. I'd like to know what consultation you took with the city of Toronto to arrive at this amendment.

Mr. Flynn: I believe you were present for the public consultation that took place—

Ms. MacLeod: I don't remember a city of Toronto councillor, a city of Toronto planner or the mayor of Toronto sitting here and asking for this to be introduced. In fact, I remember many municipalities as well as many other stakeholders coming to this committee and asking that this be removed, save major energy producers.

Mr. Flynn: The city of Toronto sat there at the end of the table and made public delegations that we all heard. I believe you were present; I know I was present. That consultation has taken place. Now we're dealing with amendments to the bill as a result of those consultations.

Ms. MacLeod: And nowhere did I ever see anybody come forward and say, "Put the city of Toronto into section 23 and make it retroactive to December 12, 2005." That is where I think my colleague to the left of me—

Mr. Flynn: You could be right.

The Chair: Can I stop the debate back and forth? Ms. MacLeod, you have the floor.

Ms. MacLeod: Thank you, Madam Chair. I believe that's all I have to say in defence of my colleague to the left of me. I think he's very passionate about this.

Just to add to Mr. Hardeman's comments, I was sitting here yesterday when I very clearly heard that two mayors in this province were privy to information before we were. I had on my BlackBerry an e-mail from a city councillor in Toronto that said that amendments weren't provided to them from the government side, so apparently Bob Chiarelli was left out of the loop, but that's no surprise to eastern Ontario. Again, I'm going to ask, did Mayor Miller or a city of Toronto planner explicitly ask for the city of Toronto to be added into section 23?

Mr. Flynn: Did you hear them ask when they were here making a public hearing?

Ms. MacLeod: I didn't, but we are now being told—

The Chair: Can I just stop the debate? I think you've had a question, and an answer has been given.

Any more comments on this motion?

Mr. Hardeman: Yes, Madam Chair. I just want to make sure we understand. Maybe we could adjourn until we can get the Hansard to prove it, but yesterday the parliamentary assistant made it quite clear that the two mayors involved would support and did support the amendment—not the public consultation, not the general terms of the whole bill. A lot of the bill I support. But he

referred to the amendment under discussion and he said in one case that the one mayor supported that amendment, and in the other case that the mayor supported that amendment.

I have no problem with the fact that they consulted on those amendments. It just brings up the question, if the government side could tell us yesterday in the debate that they had consulted with the mayors, I would wonder and question whether they could tell us whether they consulted with this amendment, or did they just go out without this amendment and this one was put in at the last minute so no one would know about it? It's rather important that we know that. That's why I think if that's the case, I'm quite willing to accept that, but I'd like to hear someone from the ministry say to what extent that consultation took place so I know, as we vote for this amendment, whether in fact it is supported by the city of Toronto. If the city of Toronto supports this amendment, I support this amendment, but I'm not sure that they do, because no one has been able to—

The Chair: Mr. Hardeman, I believe the question has already been asked. The answer, whether it was the right answer or not, was given.

Mr. Hardeman: Madam Chair, I'm sure that it's because of my inadequacy of the presentation that I didn't get an answer, so I wanted to make sure—

The Chair: No, I think you were very accurate.

Mr. Hardeman: —that everyone understood the gravity of the situation. It's so important that we all understand what's being done here.

It's rather interesting. An hour ago or so we were debating the issue of things that went to the Ontario Municipal Board and, if the conditions change, the rights that people have to be informed about those changes before the Ontario Municipal Board can make a decision on that application. Now, all of a sudden, we have here an amendment—

The Chair: Mr. Hardeman, can I interrupt you for just a second and remind you that you're speaking to the motion, which is 94. If you could speak to the motion—

Mr. Hardeman: Yes, and that's what I'm getting to.

The Chair: I hope you are, because you're going about it in a very circuitous fashion. You can still speak to section 23 because Mr. Prue will be, following the vote on this motion, but if you could get to the point that you would like to clarify on this motion that is before me, that would help me.

Mr. Hardeman: Yes. Thank you very much, Madam Chair, and I have every intention of getting there. I'm using the issue of the previous example as to the contradiction that we have here in this amendment, that we think that if new information or new conditions are going to the Ontario Municipal Board—and this is the government's position on it. If it goes to the Ontario Municipal Board and there are changing conditions, here is a list of people who have a right to be heard about those changes before the Ontario Municipal Board can make a decision. This amendment is in fact changing conditions on an application, changing for the city of Toronto, making

them part of section 23, which previously they were not. So it's a major change for the city of Toronto in the bill and, as was pointed out by my colleague, it's going to have a major impact on what's presently happening in the city of Toronto as it relates to energy projects. So far, I'm to gather from the answers we haven't gotten that they have not even been told that this is going to happen, much less whether they agree or disagree with it. It's just, we're going to tell them when the thing is finished whether they are part of section 23 or not.

I think it's very important that we not only appear to be fair, but that we are fair and have them be consulted on what the impact will be on their authority and their ability to regulate the city as they see fit. I think taking away their right to have input in the planning process that relates to all energy projects within the city is a major amendment that you don't make by decree and tell them after the fact that it's going to happen. I think that is what's happening here. I don't believe that they have been consulted on it, and I think we're just going to change the way the world turns for them and tell them tomorrow, when it's too late for them to do anything about it.

With that, you may have gathered, Madam Chair, I'm not supporting this amendment.

The Chair: All right, I think we've come to the end of speakers on this motion. A recorded vote has been requested.

Ayes

Brownell, Flynn, Lalonde, Rinaldi.

Nays

Hardeman, MacLeod, Prue.

The Chair: That's carried.

Mr. Prue, you have the floor, speaking to section 23.

Mr. Prue: I believe the notice 92 was the Conservatives first. I'm just trying to stay within the order, but I will speak first. I don't mind.

The Chair: You were the first one who indicated you wanted to speak, but I'm happy to go in the order that they were given to me, or they're before me, but you have just indicated a speakers' list. Because it's not to a motion.

Mr. Prue: Okay, I do wish to speak. Do my colleagues wish to speak first, because you do have the first motion?

Mr. Hardeman: No, it's fine.

The Chair: I appreciate the courtesy extended. Mr. Prue, you have the floor.

Mr. Prue: Thank you very much. We are not supporting this section. Obviously, you have seen the number of people who have come forward. Every single environmental group is opposed to what you are doing here. Every single citizens' group is opposed to what you are doing here. Every single municipality who spoke to

section 23, including Hazel McCallion, is opposed to what you are doing here.

I don't want to be alarmist, and I'm not being alarmist. I don't know what's going to happen in the future, nor do you. But I just want to put a couple of scenarios: You pass this today and you don't get re-elected. The Conservatives get re-elected. This will give them full authority to site coal plants—full authority to site coal plants. You've heard the debate inside the Legislature; you've heard the debate about clean coal, you've heard Mr. Yakabuski; you've heard other people talk about wanting to have those coal plants. You take away the right of municipalities to have any say whatsoever—this is an energy project—and it will allow any type of energy project whatsoever. It can be coal plants; it can be energy from waste; it can be something benign like windmills—although we've had a number of deputants talk about how they'd like to be consulted on those as well—and yes, it can be a nuclear power plant. That is not being alarmist. This government is on record as being pro-nuclear and wanting to spend up to \$40 billion in refurbishing existing nuclear plants and building new ones. The municipalities which may be involved will have absolutely no say because of what you are doing here today.

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The screams may not be coming because everybody's got their fingers crossed. I know they've got their fingers crossed: "Please don't let it be me." They're just hoping that of the 450 municipalities, it happens to somebody else. But I will tell you, when it happens, as it has to the city of Toronto and the port lands, there are going to be screams. When it happens, Mr. Rinaldi, in your riding, there are going to be screams. In yours, Mr. Lalonde, in yours, Mr. Flynn, and in yours, Mr. Brownell, there are going to be screams when the municipality has no say whatsoever on the siting of energy plants. People are going to wake up and they're suddenly going to start asking why and how this has happened. We're going to be able to point the finger pretty bluntly, because I know what's going to happen on 23, the same as I just saw happen to the amendment: You're all going to put your hands up. But I want to tell you, if fate is good—and sometimes I love fate—I hope that those energy plants end up in your ridings, and that your municipalities turn around and say, "We want to be consulted." You are the ones who are going to have to go and tell them, "You're not going to be consulted, because I voted that you would never be consulted again." That is the reality of what you are doing.

We have a government, we have a Premier who stands up every day and talks about municipalities as if they're some kind of partners, as if they're some kind of mature government, as if they need to be listened to. But what we have here in this committee, and I'm sure what we're going to have as a result of this committee in the House, is a government that is bound and determined to have its own will, notwithstanding what the municipalities, the mayors, the elected councils and the people in those

municipalities think is in their best interest. I find that really quite appalling; I find it totally appalling. This is not good planning process. It is not. It is ad hoc planning process by a government that is terrified of running out of energy.

I read the Toronto Star; I don't know why sometimes, but I do. Every week in the Toronto Star there is a little chart about energy, about electricity and usage, how much we're making and how much we're using and all that stuff. Only twice this summer, a couple of hours, did we import electricity. All of the demands of this province, save and except for a couple of times this summer, were met internally. There is no crisis, save and except the ones you are making yourselves.

Interjection.

Mr. Prue: Mr. Flynn, I can see your face. There has been no crisis this summer, save and except the ones you are trying to put in the public's mind. We are producing, and did all summer, sufficient electricity for the needs of this province. I don't know what's going to happen eight or 10 years down the road, whether we're going to have great need for more energy or not—

Mr. Rinaldi: It's called planning.

Mr. Prue: You can say that it's called planning, but many of the industrial users, which use a lot of this, are disappearing from this province. Maybe you need to talk about that too. I saw that another couple disappeared today; another couple of auto supply plants disappeared this morning, losing another 300 jobs in the Cambridge area. That's the reality: A lot of the big users, unfortunately, are maybe not going to be there, and planning needs to look at that too.

We in the New Democratic Party don't want to use the sledgehammer that you're using to, quite frankly, just say that everybody's pushed aside, that we're building these energy processes wherever we need to build them, on the anticipation they might be needed. What is important is conservation, and what you're not looking at is conservation. Instead, what you're using is a fear factor that we're going to run out: "We don't want the lights to go out." That's what I hear. Whenever you ask a question in the House or here in this committee: "We don't want the lights to go out." But the lights aren't going to go out, the lights have never gone out, and I am not one who believes they're likely to go out in the near future. And I'm not one who believes they're going to go out if you let municipalities continue to keep the option of having some kind of say whether or not it is an appropriate location for an energy plant in or near where you want to build it.

With the greatest of respect, going back to my own riding and what is there adjacent to it in the port lands, the arguments that are used to site it there are ridiculous beyond belief: "Toronto doesn't have the energy capacity inside the city of Toronto." Of course we don't. We get most of our electricity from Niagara Falls, we get it from Kincardine, we get it from Pickering. No, it's not located in Toronto. Does it need to be located in Toronto? That's the question. Somebody thinks we need to locate it in Toronto. I don't know why, but somebody thinks so.

This is what ordinary planning looks at. Can you get what you need in your own locality? Do you have to go somewhere else to get it? Can you build the right things there? Can you not?

In terms of Toronto, Toronto has a dream for its waterfront. I share that dream.

Mr. Rinaldi: Do you share the dream for waste, Michael?

The Chair: Mr. Rinaldi, I'm sorry, but Mr. Prue has the floor.

Mr. Prue: I have a dream for waste and it's probably far better than your dream, because probably mine's in Technicolor. But Toronto has a dream for what they want on their waterfront and it does not include a giant gas-fired, pollution-spewing energy project that you have in your dream. I think the people of Toronto need to be listened to, just as I think the people in other parts of the province need to be listened to in terms of how they want their communities developed and whether or not they're appropriate uses.

I have seen some of the people of Bath who are talking about the incinerator that's there and using it. If they want to use that, then God bless them. It's their community and I think they should have a choice. Or the people of Kirkland Lake, at one stage, wanted to put garbage in the lake.

Mr. Flynn: How about the folks in Michigan?

The Chair: Mr. Flynn, please. Mr. Prue, you still have the floor.

Mr. Prue: I intend to do the same when they're speaking, Madam Chair, because I might as well. If they can do it, I can do it even better, and I'll prove it.

The Chair: Mr. Prue, can you just speak to the section, please.

Mr. Prue: I am speaking to the section.

The Chair: I understand that.

Mr. Prue: I haven't deviated.

I do believe that the municipalities have the unqualified right, through the elected representatives, to do what is best for their municipalities. They will not allow the lights to go out—not in your municipality, not in mine. They will not allow the lights to go out. They will do what is necessary, as municipalities, as mature governments have proven that they can do.

I think what this government is doing is absolutely and totally repugnant. It is repugnant to me. It is repugnant, I know, to many people, including all of the municipal representatives, the community representatives, the environmental representatives and literally everyone who spoke to this bill, save and except the people you are trying to assist here somehow: the people in private development who are trying to get the easy road to building whatever kind of facilities they want to build, be it gas-fired, be it electrical, be it nuclear, whatever. They are the only proponents and the only people who agree with what you are doing.

I am opposed. I think the people of Ontario will be opposed. I have no doubt what is going to happen in this committee, but I will tell you, if this committee proceeds

and passes this section, there will be one big fight in the Legislature. Be prepared. I'm telling you without threatening you, but be prepared, because I know what's going to happen if you include section 23. There will be considerable opposition debate, there will be considerable opposition anger and there will be, I'm sure, a long road to hoe when this comes back to the Legislature.

Recorded vote, Madam Chair.

The Chair: Mr. Hardeman.

Mr. Hardeman: A lot of what I was going to say has already been said by someone who understands the situation, I suppose, more acutely than most of us here because of the amendment that was previously made to the section with the motion from the government that actually now puts the ball squarely in the court where the present project is underway as opposed to where someone may want to site it in the future.

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I just want to start off by saying that we've heard the government side speak a number of times about the support and the lack of support and who supports what, but I think it's important to mention that none of those municipal people—mayors, council representatives and the people involved in the planning process—who spoke to the planning aspect of the bill spoke in favour of section 23. Every one of them said that generally they were supportive of the bill. They were quite supportive of the changes to the Ontario Municipal Board and the changes to a number of other areas. I'm not sure that support is going to continue when you look at how the bill has changed, because obviously the bill that we had public hearings on and the bill that the government is going to take into the House after these clause-by-clause hearings is totally different. A lot of changes have been made.

In my 11 years here, I don't think I've ever been involved in a bill where so many sections were completely removed and replaced with a totally different section. I've had many bills where there were a lot of changes and even more amendments than here, but to totally rewrite section after section, up to and including the point where opposition amendments, after we went to all the trouble of preparing them and so forth, no longer applied because they'd come on the agenda after the government's amendments to the same section—they've changed the section so much that the amendment doesn't apply any more. It's now out of order because the wording I wanted removed is no longer there. They've changed it to a different word. It still has the same negative impact, but it eliminated the ability of the opposition to deal with the topic at hand.

I just want to go to the section generally. If the total bill—I'm going to start there—accomplishes what the government said they wanted to accomplish with this bill, that would totally mitigate the need for section 23, because it was supposed to improve the operation of the planning process so that the development of the province would be done in an orderly fashion, in an expedient, effective and efficient fashion. That's the intent of the bill.

If that's the case, then why would energy—and I recognize the need for energy. I even recognize that there are going to be times when people don't particularly support the option of putting the development of energy plants in their local community, but energy is no different than all other development projects. They have to go through an approval process and then they have to build it, and we have to make that process as effective and efficient as possible.

If there was a new auto manufacturing plant that wanted to locate in Ontario, we wouldn't have a bill that exempted them from the Planning Act. We would try and expedite the process through the Planning Act to make sure that everybody had their say and so that the municipalities could make a decision that they want it in their community, where best to put it and in a way that it has as little negative impact as possible.

I have no reason to believe that municipalities wouldn't do exactly the same thing for energy plants. They're not a negative in the community if they're properly sited and properly located. I have no reason to believe that municipalities wouldn't accept that. But to pass a bill that says, "Because we want energy moved through the system faster, we want the municipalities out of the process, because they'll just hold it up": I don't believe that to be true. It's also bad planning policy to have any industry, whether it's government supported or government funded, totally exempt from the process.

We can make an argument, I suppose, and say, "Well, if you go under the Environmental Assessment Act, the board will consider some planning aspects." They will not consider the same planning aspects as they would if the municipality was doing it. The municipality, under the law, can go to the Environmental Assessment Board and ask to be a participant in the hearing. They cannot be part of the decision-making process, so they cannot go to the hearing and say, "We understand the province's need and the people's need to have energy plants, but we don't think that's the right place to put it. We think the area that we've designated over there as industrial is a far better place, and I don't think building it there is going to be any more difficult than where you're proposing to put it." That's the type of information I think municipalities could provide.

Incidentally, if the intent of this legislation is to move it along quicker, I can assure you that the environmental assessment process is much longer than the planning process for the same project. If an applicant decides that they want to build a certain facility, like a nuclear plant in downtown Toronto, it's going to take less time to put it through the planning process than through the environmental process. And they can be done concurrently, so there is no further waiting time.

The only reason, the only justification I've heard so far from the government as to why section 23 is there, is because they don't want municipalities involved with the decision as to where the energy plants are going to go. That's it. If that's the reason, I think it totally negates the planning changes we're proposing here. When we're say-

ing that we're going to give more local authority to municipalities, this section says that's bull; that's not happening. When the rubber really hits the road, we are going to take that entity right out of the Planning Act, because we don't want the municipality messing around and telling us where electricity plants and energy plants should go; we can make that decision better on behalf of the people of the province than the local people can. I think that's totally wrong, and that's why I totally oppose section 23 in its entirety—not because I don't think we need energy plants; not because I think that the province doesn't need to get on with the job. I think it can all be done. Let all municipalities have authority to direct where they think it would fit within the community, as opposed to having the province say, "It's going there, come hell or high water." So I totally object to this, and I agree with my colleague from Toronto in not supporting this section of the act.

The Chair: Mr. Lalonde.

Mr. Lalonde: I'd just like to refer to some of the comments that my colleague Mr. Prue has referred to. We have to remember that we have to look to the future to preserve jobs for all the people of this province. We keep hearing in the House that paper plants, paper mills, at the present time are closing because of the cost of electricity. When we say that it's the cost of electricity, it's because we have to buy the electricity. You said that this summer we only had to purchase electricity twice. Do you remember last year, in September, that we paid up to \$1.03 per kilowatt hour as the average for the month? We keep hearing in the House that the paper mills are closing because of the cost of electricity. In my home riding there was a windshield manufacturer that was really affected. So we have to look, for everyone in this province, at the creation of jobs, the preserving of jobs, and also to make sure that everyone has the lights on for the next generation to come. This is why this government has to plan for the future. I believe my colleague Mr. Flynn has explained the proper process. It's not automatic that the people would be able to build any energy plant in any place in this province.

The Chair: Ms. MacLeod.

Ms. MacLeod: Just to pick up on the point about our future, I represent one of the youngest, fastest-growing areas in all of eastern Ontario, maybe even in all of Ontario. As somebody who represents them as a member of their generation, I can assure you, right here and right now, we do not like the fact that our municipal governments will be eliminated from the planning process. We like to have say. We know that the local government has the greatest ability to connect and communicate with the residents. I've seen in my own community, and I know members opposite have seen in their own communities, that the local government has the highest rate of efficacy. I think it's important that we leave them in this planning process. I don't agree with removing them in section 23. I don't agree with section 23 as it currently stands, and I will be voting against it. I will be voting for my generation, which wants to put safety in their own community

first. I understand we're talking about jobs and about job creation and I'm not sure why, because that's not what section 23 is about. Section 23 is about eliminating local voices from local community decisions, and I cannot support section 23.

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The Chair: Mr. Hardeman.

Mr. Hardeman: In relation to Mr. Lalonde's comments about having to keep the lights on and proceeding to develop the generation capacity for future generations, we commend him for such a comment because I think that's true. I don't think we've done enough of that in the past number of years to move generation forward.

Having said that, the cost and benefit of section 23 is not going to change that. I would defy the government side to come forward with one example where the planning process has held up the development of electricity generation anywhere in the province of Ontario. He mentioned the paper mills, that northern Ontario is suffering because the paper mills can't afford the type of electricity cost. The big argument in northern Ontario was that they're generating enough electricity for the paper mills—

Mr. Prue: At 3.2 cents.

Mr. Hardeman: Yes, but it's being sold in a market where there's a greater revenue for it and they have to pay the higher price. The challenge is that we generate more to keep the market price down. But again, there is no evidence anywhere that suggests that the planning process is what's holding it up.

I would suggest to the government side to leave the municipalities involved and look at the Environmental Assessment Act to see if we can't find a way to make that work better. That's what's holding it up. It's not the planning process, it's not the city of Toronto saying, "We don't want it here," that's holding up this generation; it's the process that they're going through for all kinds of other things. I think taking the planning process out will eliminate the first step and make the other seven steps that they must go through much longer and much more onerous, because they didn't take that initial step to see whether it's good planning to put it there. They're going to go through the environmental assessment, they're going to have all the documents ready and then somebody at the Environmental Assessment Board says, "Oh yes, we're also responsible for the planning aspect of this, aren't we? Because it's the Consolidated Hearings Act and we're going to hear the planning application too. The municipalities no longer do that." And we turn it down because there's going to be too much traffic on the street there. Now all the others will be for naught.

It makes much more sense, where I come from, to decide whether the social impact of it is going to be acceptable before you do all the technical environmental reviews to see whether the plant itself will pass the test of the environmental assessment, and not have it all done and then find out, for other reasons and the public perception of it, that it's turned down because it's the wrong location. Let's look for the location first and then decide

whether they can build an entity there that will work and will pass the environmental tests that are required in the province.

I think suggesting that it is for cost, as section 23 is there, the cost of hydro, is a long stretch. I think we're going to have trouble making those ends meet. As they say, that just doesn't fly.

The Chair: Mr. Flynn.

Mr. Flynn: I understand the emotion that's being expressed, and if I was from those parties perhaps I'd be expressing the same emotions. But OPG and Hydro One have had exactly this provision for a number of years. It wasn't changed by the Conservative government and I don't think municipalities were falling apart at the seams or felt like they were left out of the process. I don't remember an uprising within the Tory caucus to remove those provisions from OPG or from Hydro One. In fact, I think it was just an issue that people accepted and realized it was probably an efficient way to meet our energy needs.

I think, at the end of the day, you either believe in renewable energy or you don't; you believe in getting those projects built or you don't; you believe in renewable energy or you just like to talk about it.

We had a gentleman here who is trying to do business in Ontario. His name was Thomas Schneider. What he wants to do is build wind energy in the province of Ontario, and he made it very clear to us. He said, "We understand the nature of the energy challenge faced by Ontario, indeed most jurisdictions, and we believe that we can be part of that solution. But we are finding it increasingly difficult to operate in Ontario, given the multiple, overlapping approvals processes and the enormous expense that actually goes along with these inefficiencies. In fact, development and construction costs in Ontario right now are 30% higher than in any other country around the world when it comes to wind development."

I won't read the whole thing. He then went on to say that section 23 of Bill 51 would allow him to do much more business in Ontario in a much more effective way to replace some of the energy that's being created from polluting sources with wind development.

I think that's what we all want and that certainly is the intent of the bill. Any proponent of any energy project in Ontario is still strongly encouraged to go through the municipal planning process, has to go through the environmental assessment process and has to stand by the provisions of the Ontario Energy Board. What this is, plain and simple, is extending what exists now and existed for some years with Hydro One and OPG to other energy projects in the province.

The Chair: Mr. Hardeman.

Mr. Hardeman: Well, I thought I'd said it all—

The Chair: I thought you had too.

Mr. Hardeman: —but the member opposite generates more questions than answers, I'm afraid. If all projects are still encouraged to follow through on the planning process, why is this section here? If we think

it's the right thing to do for developers to use that method, why would you exempt and make it so you don't have to? If you think it's the right thing to do, why not have everyone do it?

It just doesn't make sense where I come from that we say, "We're still going to encourage everybody to use the planning process. We think municipalities should be involved in how their community develops because we gave them the planning authority"—then why do we want to say that one individual who doesn't really care about that and just wants to get on with producing energy has been exempted from this? So the competitor can't afford to go through the planning process because, according to the government side, that's too expensive and cumbersome; you can't be competitive and follow the process. It would seem to me if that's a good process to follow, you would mandate that they all have to follow it, and what's fair for one is fair for us all. I would think that it would make much more sense.

I know why the OPG or Hydro One were exempt: It's because they were owned by the government. It was difficult for the government to make the rule to say, "You have to go through the municipality but we can override you at any point in time." I can see the difference now where the private sector says, "We want equal treatment." I would be supportive of an amendment that says the government-owned agencies also must comply with the Planning Act so municipalities would have some say into how that goes. I just don't believe that a race to the bottom and no one having to go to the local authorities is the answer at all.

The Chair: I have no more speakers to section 23. Shall section 23, as amended, carry?

Mr. Prue: A recorded vote.

The Chair: A recorded vote has been requested.

Mr. Flynn: Of what?

The Chair: A recorded vote has been requested on section 23, as amended.

Mr. Flynn: Are we dealing with the NDP amendment?

The Chair: No, they're not motions. This is just on the section.

Ayes

Brownell, Flynn, Lalonde, Rinaldi.

Nays

Hardeman, MacLeod, Prue.

The Chair: That's carried.

Section 24 has no amendments, but there is a request for discussion on this item. Mr. Prue.

Mr. Prue: Section 24 is a consequential section to section 23. In and of itself, it's just going to do the same thing. We've had considerable debate. I am opposing section 24 as I did 23. It's just another nail in the coffin, I guess, sticking it to municipalities.

A recorded vote on that, please.

Interjection.

The Chair: Are you voting or are you requesting—did you want to speak, Mr. Hardeman?

Mr. Hardeman: Yes. Again, I would agree. It's the same issue, only it goes a little further and applies further abroad. I too think it's wrong, but I think all the discussions would be the same. I see absolutely no good reason to exempt certain projects in the province from the planning process. If they're going to be part of our community, they should be part of our planned community. So I can't support that one either.

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The Chair: Shall section 24 carry? A recorded vote has been requested.

Ayes

Brownell, Flynn, Lalonde, Rinaldi.

Nays

Hardeman, MacLeod, Prue.

The Chair: That section is carried.

Section 25: Mr. Prue. You have the motion, and I believe there is a typographical error. Has that been brought to your attention?

Mr. Prue: Yes, it has been.

The Chair: If could you read it correctly into the record.

Mr. Prue: Yes, I will, but before that, I'd like to thank the staff for bringing that to our attention. It will now read, "Subsection 25(1) of bill (clause 70(1) of Planning Act)."

I move that clause 70(1) of the Planning Act—

The Chair: Mr. Prue, can I just stop you? The (b) is still in there.

Mr. Prue: Sorry. Okay: 70(1)(b) of the Planning Act.

I move that clause 70(1)(b) of the Planning Act, as set out in subsection 25(1) of the bill, be struck out and the following substituted:

"(b) prescribing information and material that are to be provided under this act and the manner in which they are to be provided;

"(b.1) requiring the municipal board to provide notice to any persons or bodies that may have an interest in or be affected by an application, referral or appeal made under this act, at the expense of the Municipal Board or such other person or body as the board may determine;"

If I can speak by way of rationale, there have been a number of cases brought to our attention of people, let me say, whose scruples are not the best who have been required under the law that is extant to go out and inform the public and those within the 400 metres or the radius of the time, date and nature of the appeal being heard before the municipal appeal board. They have done so in ways that, quite frankly, would not meet anybody's tests.

One of them that was brought to my attention was that in addressing the letters, instead of putting down—and

I'm just going to make this up; I don't want to identify the place—521 Maple Street, they put 521-13 Maple Street. They added "13" to the end of all of the letters as they went up and down the street so that they came back from the post office undeliverable. Then they said, "Well, we sent them out by mail." But of course they sent them out by mail and none of them arrived.

So that is what the purpose of this is: to put that responsibility in the hands of the municipal board, so that the municipal board would have the authority and the obligation to send out the letters to the people involved and affected, who would know the time and the date and the place of the hearing and what the nature of the hearing was going to be, and that the Ontario Municipal Board could either, under its own volition, pay for this, or they could charge it against the applicant, or they could charge it against the municipality or whoever they deemed to be the appropriate person, but that it would be done in what we consider to be a fair manner.

That's the whole intent of this. If the appeals process is going to be further narrowed so there are even less people involved, if it's going to be more difficult for individuals, we want to make sure that at least they are notified and that they are notified by a neutral party, not in all cases the proponent, who may not want to have them there.

The Chair: Comments or questions?

Mr. Hardeman: If I could, to the mover of the motion, the description of "any person having an interest in or affected by an application": How would one define that?

Mr. Prue: Unfortunately, the way the government has defined it. I mean, I don't know how it would be any different from that. Those who made a presentation, those who sent in a written submission, the minister, the council: I guess that's who they'd send it to. But at least we would be assured that those people would be informed of the proper date.

You see, when you appeal, you don't know when the appeal is coming up. That isn't set out at the time. Usually that's set out currently by the developer, who sends out the letters saying the appeal is going to be heard. They go before the board and they say, "We sent out the notices." But there have been many, many cases over the years—and I only gave but one example—where that has not been done in what I would say is a fair and proper manner. I'm simply requesting that in order that those people who have the right to appeal be notified and be notified of the time and date so that it doesn't go by without them being there, it be sent out by the neutral party, which I think in this case would be the board or the board's designate, and that the board could ensure the costs were appropriated to the appropriate appellant, be that the municipality, the developer or the individuals.

Mr. Hardeman: I don't disagree with it. I guess the question really becomes, is there some kind of mechanism that would ensure that—even using the government's definition of the parties, as limited as it is—the OMB had access to those parties to know who to contact?

Mr. Prue: You appeal, and the notice goes to the OMB. That's what I understand. That's the way it's always worked. You file a copy with the municipality, you file a copy with the proponent, you file a copy with the OMB. You can tell me if that's wrong.

Mr. Hardeman: Yes, but my question is, when you're talking about requiring the municipal board "to provide notice to any persons or bodies that may have an interest in or be affected by an application"—the original meeting was a public meeting where 10 people spoke.

Mr. Prue: Yes.

Mr. Hardeman: But how does the OMB know who those 10 people were?

Mr. Prue: Well, I believe—

Mr. Hardeman: Because the objector doesn't have that information and doesn't forward it. They just forward why they're appealing.

Mr. Prue: The OMB would have to then request from the clerk of the municipality who was there.

Mr. Hardeman: Okay.

The Chair: Any further comments or questions? Seeing none, shall the motion carry? All those in favour? All those opposed? That's lost.

Government motion is next. Mr. Rinaldi.

Mr. Rinaldi: I move that section 25 of the bill be struck out and the following substituted:

"25. Subsection 70.1(1) of the act is repealed and the following substituted:

"Regulations

"(1) The minister may make regulations,

"1. prescribing forms for the purposes of this act and providing for their use;

"2. prescribing information and material that are to be provided under this act and the manner in which they are to be provided;

"3. prescribing the manner in which any notice is to be given under this act, including the persons or public bodies to whom it shall be given, the person or public bodies who shall give the notice and the contents of the notice;

"4. prescribing the timing requirements for any notice given under any provision of this act;

"5. prescribing information and material that must be included in any record;

"6. prescribing plans or policies and provisions of those plans or policies for the purposes of clause (f) of the definition of 'provincial plan' in subsection 1(1);

"7. prescribing any ministry of the province of Ontario to be a public body under subsection 1(3);

"8. excluding any board, commission, agency or official from the definition of 'public body' under subsection 1(4);

"9. prescribing conditions for the purpose of subsection 8.1(1);

"10. prescribing a term for the purpose of clause 8.1(2)(a) and qualifications for the purpose of clause 8.1(2)(b);

"11. prescribing eligibility criteria for the purpose of subsection 8.1(3);

“12. prescribing classes for the purpose of clause 8.1(4)(c);

“13. prescribing requirements for the purpose of subsection 8.1(7);

“14. prescribing the methods for determining the number of members from each municipality to be appointed to a municipal planning authority under subsection 14.1(5);

“15. prescribing matters for the purpose of clause 16(1)(b) and for the purpose of clause 16(2)(c);

“16. prescribing the processes to be followed and the materials to be developed under section 16.1;

“17. prescribing municipalities for the purposes of subsection 17(13) and section 69.2;

“18. prescribing information and material for the purposes of clauses 17(15)(a) and (b), public bodies for the purposes of clause 17(15)(b) and the manner of making information and material available for the purposes of clause 17(15)(c);

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“19. prescribing, for the purposes of clauses 17(17)(a) and (b), clause 22(6.1.3)(a), clause 34(10.4.3)(a), clauses 34 (13)(a) and (b), clause 51(19.1.3)(a) and clause 53 (4.1.3)(a),

“i. persons and public bodies,

“ii. the manner of giving notice, and

“iii. information;

“20. prescribing time periods for the purpose of subsections 17(44.4), 34(24.4) and 51(52.4);

“21. prescribing public bodies for the purpose of clause 26(3)(a);

“22. prescribing upper-tier municipalities for the purpose of subsection 28(2);

“23. prescribing matters for the purpose of subsection 28(4.0.1);

“24. prescribing conditions for the purpose of subsection 34(16) and limitations for the purpose of subsection 34(16.0.1);

“25. prescribing rules of procedure for committees of adjustment;

“26. prescribing criteria for the purposes of subsection 50(18.1) and subsection 57(6);

“27. requiring that notice be given under subsections 51(20) and 53(5);

“28. prescribing rules of procedure under subsection 53(9) for councils and their delegates;

“29. prescribing persons or public bodies for the purposes of subsection 53(10);

“30. prescribing rules of procedure for district land division committees constituted under section 55;

“31. prescribing any other matter that is referred to in this act as prescribed, other than matters that are prescribed under sections 70, 70.2 and 70.3.”

The Chair: Comments or questions?

Mr. Prue: I have a question concerning number 8. As I understand the motion, this would give the authority to allow the minister to make any regulations excluding any board. Could we go through it? Would that include any conservation board?

The Chair: Can we ask staff for a legal answer on that one?

Mr. Prue: Whoever can answer.

Mr. Shachter: As you know, section 70 sets out all the list of regulations that the minister may make with respect to the various matters. They track the matters that have already been dealt with previously in the act. If you go back to the definition of a “public body,” you’ll see that it’s intended that a regulation can also set out what could constitute a public body for the purposes of the definition, or there could be a municipality, local board, ministry department, board, commission, agency or official.

Mr. Prue: But the question is—this is to give the minister authority to make regulation to exclude any board. I’m just asking, can that be a conservation board?

Mr. Shachter: I apologize. I just wanted to get some clarification. I understand that that authority is existing today, that this isn’t new. So the answer is yes.

Mr. Prue: In terms of “commission,” it can exclude a local hydro commission, a police commission?

Mr. Shachter: I have to apologize. I don’t know if they would be included. It would be under either the Police Services Act or the Municipal Act as to whether they would constitute public bodies for the purpose of that regulation.

Mr. Prue: As an “official,” could that exclude the Ombudsman?

The Chair: Mr. Prue, I think you’ve asked some good questions and you deserve some clarification. We’re five minutes away from our lunch recess, so maybe you could provide those questions to staff, staff would have an opportunity and we could take our recess now, if that’s agreeable to all members on committee.

We’re at recess. We will be returning at 2 o’clock.

The committee recessed from 1256 to 1403.

The Chair: Good afternoon. We’re here to resume clause-by-clause on Bill 51, An Act to amend the Planning Act and the Conservation Land Act and to make related amendments to other Acts.

When we left off, we were on section 25. Mr. Prue had asked a question of legal staff. Do you need the question to be asked again? You have the floor, Mr. Prue.

Mr. Prue: I did have a discussion with legal staff, who informed me that it may be impossible to answer the question within the lunch hour. I told them to do the best they could, but not to starve.

The Chair: Okay. So how did we do?

Mr. Shachter: I just want to say that we did very well, because we didn’t starve.

In order to properly answer the question, I think one would have to go back to the constating documents for any of the boards, agencies, commissions or officials. What I mean by that is—for example, the question’s been asked whether it would include a police services board. It could potentially, but one would have to go back to the original documentation setting up such an agency or such an entity—or the Ombudsman, as was referred to in the question—in order to determine whether in fact they

would come within that provision. The reason for the difficulty in being able to do it over the lunch hour is that it would be a fairly massive project to go through each and every single board, commission, agency or official to determine, from their constating documents, whether in fact they would come within the reference in paragraph 8.

The Chair: Mr. Prue, you still have the floor.

Mr. Prue: The problem I have, then, is that to support this, I potentially support having some future minister shut out conservation boards, police commissions, the Ombudsman, any number of people who I think maybe should have an opportunity to comment, to participate. Is that the risk I run if I support this?

Mr. Shachter: Again, I wouldn't be able to comment on that without having the opportunity to actually go through the whole analysis of determining in fact which of those particular matters would actually be included within paragraph 8. At the same time, we are aware that this does go back to the one-window protocol, and I appreciate that the member is aware of that. But I can't comment or agree, unfortunately, without having had an opportunity or taking an opportunity to actually do the research in order to determine whether those entities are or not.

Mr. Prue: Could I ask whoever is going to be answering for the government—because I see the parliamentary assistant is not here—for the rationale for including this? Is it the intention to exclude somebody?

Mr. Flynn: I don't think we're including as much as not excluding. My understanding is that this is the existing condition; this is the status quo. Other governments have supported this in the past and our government is not changing it.

The Chair: Further comments or questions? Seeing none, all those in favour of the motion?

Interjection.

The Chair: Sorry, were you indicating? Mr. Hardeman.

Mr. Hardeman: I just wanted to ask the legal branch, looking at the 31 regulatory authorities in this motion, if you read number 31 and took out the word "other," would that not cover all of them?

Mr. Shachter: You have two circumstances set out in the 31 paragraphs. The first is what one would want to do, as I understand it. I don't wish to speak for legislative drafting counsel, but I understand that what one would want to do is tie in the specific regulation-making authority to the reference in the act. So you're going to have 30 references. As you can note, they refer back to various provisions in the Planning Act.

In addition, it would make some sense to have an overriding regulation that says, "prescribing any other matter ... referred to in this act as prescribed," other than matters that are already prescribed specifically. The matters that are referred to in paragraph 31 deal with matters that have otherwise been included in this particular section. So for example, section 70.2, as I recollect off the top of my head, I believe refers to

development and permit system matters. It's to deal with matters other than those already addressed in those three areas. Simply put, you have a series of 30 paragraphs setting out specific authority, and paragraph 31 is the general authority with respect to any other areas that have been prescribed that haven't been picked up in the previous 30.

Mr. Hardeman: Then the first question is, this paragraph 31 does not give regulatory powers in areas that are not prescribed as giving the minister the authority to regulate that?

Mr. Shachter: If I understand the question, I agree. That's correct. The authority to prescribe would have to be contained previously in the act. It doesn't in and of itself give any other authority other than is contained already.

Mr. Hardeman: So it's more a catch-all, then, for if we missed one.

Mr. Shachter: That's correct.

Mr. Hardeman: But would it not be sufficient to deal with them all as one line?

Mr. Shachter: I have to tell you, I think I'm now outside of my area of expertise, because I believe that is a legislative drafting question. It deals with legislative convention. I don't know if it's appropriate, but I would defer to legislative counsel for that response.

Ms. Mifsud: I think what happened when this bill was first drafted was that they had very specific provisions. They went provision by provision, so they just built on that, you could say, referring to anything in this act as prescribed. I might add, though, the exclusions, other than matters that are on sections 70, 70.2 and 70.3, are there because those regs are made by cabinet. These here are ministerial regs, and so any time you see the word "prescribed," it means "prescribed by regulation by the minister."

Mr. Hardeman: I thank you very much for that. That's why I did point out that by taking out the word "matter"—because I realized that it would require the last part of that section to exclude those that weren't included. I was really wondering why we have to list 30 of them and then do the blanket coverage and say, "If we happen to miss one, "Maybe it should have been 32 and we missed two, so we'll put a catch-all in it." A catch-all would not have done it all.

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Ms. Mifsud: The catch-all, legally, would have done it all. As I say, I think we just built on existing things. Also, sometimes things are more important than others or we're afraid of something getting missed, so we put this catch-all so that you're not left with a reference to "as prescribed," and then there's no regulation-making power dealing with it. It really is just a precautionary thing.

Mr. Hardeman: Thank you. I'm just wondering—and I know the answer is going to be, "Well, it was already in the act, so it's in there again." I presume that's the answer, anyway. But I'm going to ask it anyway.

Number 25, "prescribing rules of procedure for committees of adjustment": It seems to me that if we're going

to give authority and power to a municipality that set up the committee of adjustment, then surely we would not be expecting the minister to dictate the rules and procedures of the committee that council has set up.

Mr. Shachter: If I could respond to that, that it's a matter more specific to the Planning Act than to the legislative drafting, you are correct. This is a matter that's currently in the act. It's been there, as I understand, for a period of time. I would suspect that the reason you would have that authority is to ensure that there is a minimum level of rules of practice and procedure, so you have administrative fairness built into the system, so there's a minimum level that's established that would apply to all committees of adjustment across the province no matter which municipality would set them up.

Mr. Hardeman: I guess this would be a comment to the government side: It would seem to me that if we're looking at changing the structure of how we deal with committee of adjustment decisions, as we are with the consent decisions, that can go to a local board, because we think they should stay very local. They shouldn't be a concern of the ministry or provincial policies. These are minor adjustments, minor variances and consent authorities that go to the local board. It would seem to me that if we're going to let the local people make the decision, we're going to let them appoint the board to hear their appeal, and we want to make sure we keep that board very local, it goes well beyond that premise by saying, "And the minister can set up the type of procedure they must use to come to the original decision."

Mr. Shachter: I don't argue with your concern. At the same time, I reiterate the comment that it's intended that at the very least there be a minimum level of administrative fairness contained in the system by the minister being able to prescribe rules of procedure. I'm not sure I've seen anything anywhere that really limits a municipality or committee of adjustment from introducing further rules in order to make sure that the committee of adjustment is responsive to the specific municipal circumstances.

Mr. Hardeman: The last question, if I might, Madam Chair, on that same issue: Are you aware that the minister has at the present time prescribed the rules and procedures used by any committee of adjustment? He's had the power to do it before. Has it ever been done?

Mr. Shachter: Off the top of my head, actually, I think it has. I just want to check. I stand to be corrected, but I seem to recollect vaguely that there are rules of procedure that apply to committees of adjustment. If not—I just want to make sure.

I've just had it clarified and I'm half right, as is many times the case. It turns out that notice provisions have been prescribed that would apply to committees of adjustment, but rules of procedure in and of themselves have not. So what that means is if you're the committee of adjustment, you've got to get certain notices prescribed, but in terms of how you actually set up your process, I guess you'd be subject to the procedures under the Municipal Act. The municipality would set up how you would have to operate, or could.

Mr. Hardeman: But this—

The Chair: Wasn't that your last question, Mr. Hardeman?

Mr. Hardeman: This section, as it's written, "prescribing rules of procedure for committees of adjustment," would not have any implication to notices given? That's not part of their procedure, is it?

Mr. Shachter: It would be my understanding that it would be part of their procedure, because when you're giving notice, remember, you're giving notice for the purposes of holding a hearing. So that would all be part of the process that a committee of adjustment would undertake.

Mr. Hardeman: Okay. Thank you.

The Chair: A recorded vote has been requested. This is on 97, committee.

Ayes

Brownell, Flynn, Lalonde, Rinaldi, Ruprecht.

Nays

Hardeman, MacLeod, Prue.

The Chair: That's carried.

Shall section 25, as amended, carry? All those in favour? All those opposed? That's carried.

Section 26, no amendments. Shall section 26 carry? All those in favour? All those opposed? That's carried.

Section 27, Ms. MacLeod.

Ms. MacLeod: I move that subsection 70.5(3) of the Planning Act, as set out in section 27 of the bill, be struck out.

Simply put, we believe that this retroactivity clause doesn't need to be there. It shouldn't be there. It is not a level playing field, and it will be difficult to manage. I think it's fairly straightforward.

Mr. Prue: Just a question. I'm not sure whether it's to staff or to whoever is answering on behalf of the government. Why was the date of December 12, 2005, chosen?

Mr. Flynn: I believe that was the date of the introduction of the bill.

Mr. Prue: That's the date. Okay.

The Chair: Any further comments or questions?

Mr. Hardeman: The problem, of course, is retroactivity. Particularly in planning matters, I think there's a real problem with assuming that certain rules go into effect after the application has been made.

Again, talking in fairness, any planning application that was there after December 12 but has been dealt with will have been dealt with under the old rules. You can't go back and redo the approval, because the building is up in the sky now. Yet someone under exactly the same circumstances who applied exactly the same day is going to have to follow different rules because of this bill. To me, it's not natural justice that everyone isn't being treated the same. I think that's the reason why up until

now we have not as a society gone to retroactivity in planning matters. You go into those and implement them today if the law passes today and not before. So I strongly oppose retroactivity.

The Chair: Mr. Flynn.

Mr. Flynn: Just to be clear, some parts of the bill would be on a going-forward basis. Some of the regulations, as I understand it, would be retroactive, so the entire bill is not retroactive.

The Chair: Ms. MacLeod.

Ms. MacLeod: The problem is that we don't know exactly what the regulations are. To make a statement that the bill was introduced on December 12, 2005—in the last two days we've spent a good deal of time actually removing big portions of this piece of legislation and putting new portions in. I don't think that it would be fair to the development community or to anybody to be faced with retroactivity, with rules they didn't know at the time were going to exist, so I would respectfully request that the government side with myself and Mr. Hardeman on this issue.

The Chair: Can I remind committee that you're only speaking to the motion that's in front of you right now, it being struck out or kept in, and not going back to previous debates, either yesterday or today. Mr. Flynn.

Mr. Flynn: I don't think we've talked about that yet, and perhaps I wasn't clear. The bill is not retroactive.

The Chair: Thank you. No further comments? All those in favour of the motion?

Mr. Prue: A recorded vote, please.

Mr. Tony Ruprecht (Davenport): It's the amendment?

The Chair: Mr. Ruprecht, this is 98, which is the PC motion in front of you.

Ayes

Hardeman, MacLeod, Prue.

Nays

Brownell, Flynn, Lalonde, Rinaldi, Ruprecht.

The Chair: That's failed.

The next PC motion, Mr. Hardeman.

Mr. Hardeman: The comments made by the member opposite that the bill is not retroactive—

The Chair: Mr. Hardeman, were you going to read the motion? That's the point we're at. We're not debating the last motion. We're at 99 now.

Mr. Hardeman: What's the—

The Chair: It's your motion. It's a PC motion. Ms. MacLeod?

Ms. MacLeod: I move that section 70.5 of the Planning Act, as set out in section 27 of the bill, be amended by adding the following subsections:

"Notice and comment period

"(7) A draft of any regulation proposed to be made under this section shall be posted on the website of the

ministry on the Internet for at least 150 days before it is made and the public shall be invited to make comments on the regulation during that period."

The goal of this amendment is to eliminate the cover-of-night regulation changes that tend to occur and expire without any of the stakeholders being aware.

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The Chair: Comments or questions? Seeing none, all those in favour of the motion?

Ms. MacLeod: A recorded vote.

Ayes

Hardeman, MacLeod, Prue.

Nays

Brownell, Flynn, Lalonde, Rinaldi, Ruprecht.

The Chair: That motion is lost.

Shall section 27 carry? All those in favour?

Mr. Hardeman: Debate on the section?

The Chair: We can have debate on this section. Mr. Hardeman, you have the floor.

Mr. Hardeman: It's going back to where I started earlier; I was just missing the amendment. The issue of retroactivity: The comment was made that the bill has no retroactivity in it, that the bill is not retroactive. Yet many of the things are retroactive, because of the implication that the rules that are in effect, the regulations and the policies that are in effect the day of the passing must be applied to every application approved after the bill receives royal assent. So in fact the planning process becomes retroactive because of the bill, and since this is the Planning Act, that makes the Planning Act retroactive. Maybe we can ask the legal branch if that's not true. You can say if it's not.

Mr. Shachter: No, no. If that was the case, I certainly would. The bill is not retroactive. That's the first thing—

Mr. Hardeman: But.

Mr. Shachter: Well, there's always the lawyer's "but."

The reason you might have a provision in a regulation to allow for transitional matters that speak to the first reading, or that speak to before the effective date of the bill, is to allow for the circumstances just as you've set out. You know the situation where somebody may get caught in the middle of the process, and because of the provisions, there's a possibility they may get treated differently. This bill doesn't speak back; it only speaks forward. But what you would want to have as an element of fairness, and this is my own point of view, are transition provisions to be able to say, for example, as was done in Bill 26, that if you had an application that was started prior to the effective date of the bill, whenever that date is, then you want to have a regulation that can reach back and say, "Yes, this is how you'll be treated." Without being able to look back and have a transition regulation, you can't do that, you can't give

those applications a bye from the provisions of the act, to use the vernacular. Does that clarify the distinction between retroactive and the use of the transition regulation?

Mr. Hardeman: Yes, it clarifies it, and I appreciate that. But the part of the bill that says that the criteria in place at the time, the policy in place at the time of the application approval, is the policy that applies to the application, is that not retroactivity because in fact that wasn't the policy in place at the time the application went in, and it does become the policy on which the decision is going to be made?

Mr. Shachter: I apologize, because I'm not sure I understand the first part of your question. Can you restate it?

Mr. Hardeman: The act says that the policy in place at the time of the approval is the policy that applies, right?

Mr. Shachter: You mean at the time that the decision is made.

Mr. Hardeman: Yes.

Mr. Shachter: I apologize. Yes, absolutely.

Mr. Hardeman: So if that wasn't the policy in place at the time of the application, doesn't that imply retroactivity?

Mr. Shachter: No. It affects rights towards the future, but it doesn't reach back and necessarily change anything. The application that you have is still the application that you continue to carry through. The planning regime that applies to that application has now changed. It now says that instead of, for example, looking at the date your application was made, which, as you've probably heard, the board has done in a number of decisions, you're going to be looking at the date of the decision. What has happened fairly often in the past is that you have transition regulations that speak to those particular matters. For example, it says that if you have had an application in place since prior to the effective date of the legislation, this is how you'll be treated, so that it can take into account the future application of planning regimes as against existing applications. But that, to my understanding, is not retroactivity.

Mr. Hardeman: We put two applications in on December 12. One was approved on January 12. With the other one, the municipality said they didn't have sufficient information, and it has not yet been approved. It now is going to be approved under different rules and different criteria than the one that was approved. They were both put in at the same time, so if they're dealt with using different rules, doesn't that make those rules retroactive?

Mr. Shachter: Not necessarily retroactive, but it might be a reason why, if you were in a position to do so, you might want to have a regulation in place that would provide for a transition of that particular application. For example, as a matter of fairness you might say, "Yes, we want all of the applications started before a certain date to be treated all in the same way." That's how you deal with the two different circumstances occurring.

Mr. Hardeman: Thank you.

The Chair: Mr. Ruprecht.

Mr. Ruprecht: My question is for legal counsel. Is it not true that the transition regulation could be—

The Chair: Mr. Ruprecht, could you speak a little closer to the mike, please.

Mr. Ruprecht: Could the transition regulation be retroactive, or is it only forward-looking, or could it be both?

Mr. Shachter: The transition regulation can speak back to the date of first reading. So it can speak back to a date before the date that the legislation came into effect without—

Mr. Ruprecht: Excuse me. "Speak back": What does that mean? Does it apply? Is that what you mean?

Mr. Shachter: Yes.

Mr. Ruprecht: "Speak back" means "applies."

Mr. Shachter: That's correct. A regulation could apply to those matters where an application has been commenced before the effective date of the legislation.

The Chair: No further questions or comments on this section? Shall it carry?

Ms. MacLeod: A recorded vote.

The Chair: A recorded vote has been requested on section 27.

Ayes

Brownell, Flynn, Lalonde, Rinaldi, Ruprecht.

Nays

Hardeman, MacLeod, Prue.

The Chair: It's carried.

There are no amendments on section 28. Shall section 28 carry? All those in favour? All those opposed? That's carried.

We're on section 29, government motion 100.

Mr. Lalonde: I move that subsection 3(6.2) of the Conservation Land Act, as set out in subsection 29(2) of the bill, be struck out.

The Chair: Any comments or questions?

Mr. Prue: Why?

Mr. Flynn: It was felt that the proposed requirement that any demolition—and that's emphasis on "any demolition"—or construction of a building to require the consent of the easement holder would likely discourage the granting of easements in the first place. It was also felt that there is a proposed electronic registry that should be able to accommodate this requirement through simple inquiries as data queries. This was just felt to be an onerous requirement that was not necessary.

The Chair: Further comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Mr. Prue.

Mr. Prue: I move that clause 3(11)(d) of the Conservation Land Act, as set out in subsection 29(3) of the bill, be struck out and the following substituted:

“(d) providing for and respecting one consolidated registry of easements and covenants under this act, the Agricultural Research Institute of Ontario Act and the Ontario Heritage Act.”

The rationale for this: There were three deputants who came forward from three specific sources requesting that this be done. The one who comes to mind best was a gentleman from Peterborough who was talking about trying to amass land for conservation and how he would go to various farmers' groups, try to get the land available and then have a covenant with them so that it could be used for other purposes.

Over the past week, I had an opportunity to read a very excellent article—I think it was in the Star but it could have been in the Globe and Mail—

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Mr. Hardeman: Do you read the Star?

Mr. Prue: I read it every day. There was an excellent article about land being amassed in eastern Ontario by Ducks Unlimited and how they had convinced a farmer to return some of the land to its natural marshy state instead of trying to drain it, and how the farmer's revenues had actually gone up since he had agreed to this, because he learned to live with the land rather than trying to control it.

It seems to me that if we look at the conservation of some of our wetlands, some of the marsh properties and others that these groups are trying to do, making it easier for them to do so by consolidating it all under one registry of easements would be a good thing. As I said, we had three groups, but the man who I think made the most cogent argument came from Peterborough. Sorry, I meant to bring in part of his statement but I did not do so. But I think most of you will remember his deputation.

The Chair: It was the Toronto Star.

Mr. Prue: Okay, there you go.

Mr. Hardeman: A question to the mover: If I look at the act and the amendment that's proposed, the act presently says “one or more registries of easements and covenants under this act,” and the only difference is that you're just naming the other two—

Mr. Prue: No, I'm suggesting that there be one consolidated registry, not one or more; that they all be brought together under one consolidated registry, so you don't have to run around and go to the agricultural institute or to the Ontario Heritage Act or to what other places where you now have to register it. It makes it onerous and time-consuming, particularly for groups who are trying to save wetlands in Ontario. As I said, we had three deputations on this. It seems to be very simple to have one consolidated registry of easements.

Ms. MacLeod: Could I ask the legal counsel to say how simple this is. Additionally, what would be the impact—which we don't have—to private property or land rights protection?

Mr. Shachter: I actually have the happy task of a colleague from legal services branch from the Ministry of

Natural Resources who can speak to this matter, Krystine Lintell.

The Chair: Who just happens to be here. How helpful.

Ms. Krystine Lintell: I'm sorry, could you repeat your question? Are you asking about the impact of a registry on—

Ms. MacLeod: My two questions are essentially, how simple is this, because my colleague has just indicated that this should be simple. That's one: How simple is his motion? The other issue I have is, what does this do for land rights protection and property rights, or the lack thereof, for rural landowners?

Ms. Lintell: To address your first question, in terms of how simple it is to provide for the consolidation of registries, right now we're at a very initial stage of even turning our minds to what the registry will look like. We haven't moved to that step yet in terms of design. My understanding, though, is that there is nothing to preclude the consolidation administratively of registries in an electronic form regardless, once you've made the preliminary step. I don't profess to know anything about technology, but a consolidation is something that—you'd be looking at a website electronic registry. That's the information I've been provided.

Your second question, in terms of how this will serve to protect—

Ms. MacLeod: No. In fact, what concerns me about this is that in my riding I have a very large agricultural and rural land base, and while sometimes it might be easy to say in theory, when you're in Toronto, that this looks like it will simplify, I don't know how I could go back and say I've supported this without consulting the landowners in Nepean-Carleton and the rest of the city of Ottawa, without knowing what the practical implications of this would be and without their—what would this do to land rights and private property rights?

Ms. Lintell: It wouldn't affect it.

Ms. MacLeod: It wouldn't affect it?

Ms. Lintell: Again, are you talking about the registry or are you talking about the legislation?

Ms. MacLeod: The registry and the legislation. I'm asking you, will it do anything to private property rights or land rights?

Ms. Lintell: Nothing can be done without the consent of the owner. So, basically, no, it won't affect it in that manner. It has to be completely voluntary.

Ms. MacLeod: Okay, thank you.

The Chair: Mr. Hardeman?

Mr. Hardeman: A question to the legal branch. We're a roomful of lawyers, so it can be anyone.

The Chair: Whoever has the shortest answer is my pick.

Mr. Hardeman: In order to combine the registries, do we have the legal ability to do that in this bill, to tell another ministry that they should have their registry consolidated with the municipal affairs registry?

Ms. Lintell: It wouldn't be a municipal affairs registry. Technically, a statute can mandate anything, in-

cluding cross-referencing or having a provision that impacts another statute. It's not a terrific idea, because it makes it more difficult to search and ascertain what the applicable law is. But technically, yes.

Mr. Hardeman: I've been told a number of times that there are certain things one can't do when generating new legislation if it opens up other legislation that isn't opened up at the present time. Do we have the ability through this act to go into the act that sets up the Agricultural Research Institute of Ontario and tell them that their registry has to be put in with someone else's?

Ms. Lintell: Again, yes, you can. Whether it's a good idea to do that without their complete buy-in is a different story.

The Chair: No more questions that I can see.

Ms. MacLeod: A recorded vote, please.

Ayes

Prue.

Nays

Brownell, Flynn, Hardeman, Lalonde, MacLeod, Rinaldi, Ruprecht.

The Chair: That's failed. Shall section 29, as amended, carry? All those in favour? All those opposed? That's carried.

There are no changes to sections 30, 31 and 32. Shall they carry? All those in favour? All those opposed? That's carried.

We're at section 33, a government motion. Mr. Brownell.

Mr. Brownell: I move that the bill be amended by striking out subsection 33(2).

The Chair: Comments or questions? Seeing none, all those in favour of the motion? All those opposed? That carries.

Next motion, Mr. Rinaldi.

Mr. Rinaldi: I move that the bill be amended by striking out subsection 33(3).

The Chair: Comments or questions? Seeing none, all—sorry, Mr. Prue. Did you say something?

Interjection.

The Chair: It's 103.

Mr. Flynn: It's the same as the preceding motion. The existing provisions of the Municipal Act are deemed to be sufficient to protect these easements and there's no need to specifically cross-reference statutes under which easements may be granted.

The Chair: Comments or questions? Seeing none, all those in favour of the motion? All those opposed? That's carried.

Shall section 33, as amended, carry? All those in favour? All those opposed? That's carried.

We're in part III. Sections 34, 35 and 36 have no changes. Shall they carry? All in favour? All opposed? That's carried.

We're in section 37, the short title. Shall section 37 carry? All those in favour? All those opposed? That's carried.

Shall the title of the bill carry? All those in favour? All those opposed?

Interjection.

The Chair: They're afraid to put their hands up now. That's carried.

Shall Bill 51, as amended, carry? All those in favour?

Mr. Prue: A recorded vote, please.

Ayes

Brownell, Flynn, Lalonde, Rinaldi, Ruprecht.

Nays

Hardeman, MacLeod, Prue.

The Chair: That's carried.

Shall I report the bill, as amended, to the House? All in favour? All opposed? That's carried.

This concludes the committee's consideration of Bill 51. I'd like to thank all the colleagues on the committee for their hard work on the bill, especially when I wasn't around. I appreciate it. I'd like to thank the committee, ministry staff and members of the public.

Yes, Mr. Lalonde.

Mr. Lalonde: I'd like to say that we just completed the clause-by-clause of one of the most important pieces of legislation, and of the 103 amendments that were submitted by the three parties, 66 were submitted by the government. It shows that the government has been consulting and we have been listening to the people, and I'm glad that we have done that.

The Chair: Thank you, Mr. Lalonde.

Mr. Prue: Having said that, I must point out—

The Chair: Mr. Lalonde, you've opened a can of worms.

Mr. Prue: —that of the 40 submitted by the opposition, the government saw fit not to pass a single one, and you didn't listen to anything we had to say.

The Chair: Thank you. Mr. Hardeman?

Mr. Hardeman: Madam Chair, I do want to commend the Chair for a job well done. Yesterday, as great as the Chair was, there was some concern on behalf of the government members that we would not finish the clause-by-clause in two days, and here we are only halfway through the second day and we're finished. So that's obviously the stern hand of the Chair.

The Chair: That's because of the good work of Mr. Brownell. I'm absolutely certain of that.

Mr. Hardeman: I do want to comment just quickly on the comments made by the government member concerning how well the government had listened to and acted on what they heard at the committee hearings. I want to point out that—and I did it during one of the debates this morning—I don't believe I have in my 11 years at Queen's Park ever been involved in a process

where as many complete sections were removed and replaced by something completely different, up to and including the point that I don't believe that you could take the act that we started with yesterday morning and make anyone realize that it's the same act that we finished with today. So as much as we've had public consultations, I believe in the next six months we're going to hear from and see a lot of people who say, "Yes, but the bill we consulted on is not the bill the government passed." Are we sure that all the people who were

involved appreciate that the changes were made because of what they said, or the changes were made because the government realized that in the first case they had done it wrong and they have completely rewritten the bill without any public consultations?

With that, thank you very much for indulging my prolonged yammering about the issues in the bill.

The Chair: Thank you so much, committee. We stand adjourned.

The committee adjourned at 1441.



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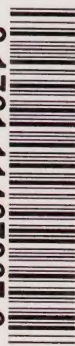
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